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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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HALVORSEN TRANSPORTATION COMPANY,  
a Corporation, J. B. ARKISON, H. C.  
HALVORSEN, GEORGE W. DORNIN, C.  
R. CODDING, G. C. CODDING, P. S.  
COLBY and A. M. DE VALL, and a Certain  
Barge and the Gasoline Launch "SEVEN  
BELLS," Her Engines and Machinery and  
Appurtenances,

Appellants,

vs.

V. J. B. CHEDA,

Appellee.

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**APOSTLES ON APPEALS.**

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Upon Appeals from the United States District Court for the  
Northern District of California, First Division.

**Filed**

MAY 2 - 1916

**F. D. Monckton,**

*Clerk*



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libellant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation, J. B. ARKISON, H. C. HAL-  
VORSEN, GEORGE W. DORNIN, A. M. DE  
VALL, a Certain Barge and Gasoline Launch,  
“SEVEN BELLS,” Her Engines, Machinery  
and Appurtenances,

Respondents.

HAVORSEN TRANSPORTATION COMPANY, a  
Corporation,

Claimant.

**Amended Praeceptum for Apostles on Appeal.**

To the Clerk of the Above-entitled Court:

The respondents herein, Halvorsen Transportation Company, J. B. Arkison, H. C. Halvorsen, George W. Dornin, P. S. Colby, C. R. Coddington, and G. C. Coddington, having appealed to the United States Circuit Court of Appeals, for the Ninth Circuit, from the final decree of this court, entered herein, you are hereby requested to prepare and certify the apostles on appeal to be filed in said Appellate Court in due course. Said apostles on appeal to include in their proper order and form the following papers and documents, to wit:

Statement, in Accordance With Subdiv. 1, of  
Sec. 1, Rule 4.

Amended Libel.

Answers (2).

Deposition of Coddling.

Testimony Taken in Open Court.

Order to Enter Decree in Favor of Libelants, etc.

Interlocutory Decree.

Stipulation for Sale of "Seven Bells."

Order for Sale of "Seven Bells." [1\*]

*Venditioni Exponas.*

Petition for Rehearing.

Order Denying Petition for Rehearing (October  
30th, 1915).

Dismissal as to A. M. De Vall.

Final Decree.

Notices of Appeal (2).

Assignments of Errors (2).

Stipulation That One Transcript be Used by  
Both Appellants.

Stipulation and Order as to Original Exhibits.

All Orders Extending Time to Docket Record.

This Praeceptum.

All Original Exhibits Introduced at the Hearing.

IRA S. LILLICK and

O. K. GRAU,

Proctors for Halvorsen Transportation Co. et al.

I. F. CHAPMAN,

ANDROS & HENGSTLER,

GOLDEN W. BELL,

Proctors for "Seven Bells."

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\*Page-number appearing at foot of page of original certified Apostles  
on Appeals.

[Endorsed]: Filed Mar. 2, 1916. W. B. Maling,  
Clerk. By T. L. Baldwin, Deputy Clerk. [2]

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**Statement of Clerk U. S. District Court.**

**PARTIES.**

Libelant: V. J. B. Cheda.

Respondents: Halvorsen Transportation Company,  
a Corporation, J. D. Arkinson, H. C. Halvorsen,  
George W. Dorning, A. M. De Vall, C. R. Cod-  
ding, G. C. Coddington, and P. S. Colby, a Certain  
Barge, and the Gasoline Launch "Seven Bells,"  
Her Engines, Machinery and Appurtenances.

Claimants: Halvorsen Transportation Co., a Corp.  
(claimant of a certain barge).

A. H. Gilmore and Standard Gas Engine Co.,  
a Corporation (claimants of Gasoline Launch  
"Seven Bells").

**PROCTORS**

for

Libelant: H. W. Hutton, Esq., San Francisco, Cali-  
fornia.

Respondents and Claimants of a Certain Barge:

Ira S. Lillick, Esq., and O. K. Grau, Esq., San  
Francisco, California.

Claimants of Gasoline Launch "Seven Bells":

Andros & Hengstler, Esqs., Golden W. Bell,  
Esq., and I. F. Chapman, Esq., San Francisco,  
Calif. [3]

**PROCEEDINGS.**

1914.

February 7. Filed verified libel for loss of goods.  
Issued monition for the attachment



of the gasoline launch "Seven Bells," and a certain barge, which monition was afterwards, on February 24th, 1914, returned and filed with the return of the United States marshal endorsed thereon, as follows:

"In obedience to the within Monition, I attached *the* a certain barge therein described on the 16th day of February, 1914, and have given due notice to all persons claiming the same that this Court will, on the 24th day of February, 1914 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein-named certain barge, I also return that there being no one in charge of said barge, I posted a copy of this Monition thereon. I attached the said Barge in the Bay of San Francisco near Hunter's Point.

JAS. B. HOLOHAN,  
United States Marshal.  
By Paul J. Arnerich,  
Deputy.



San Francisco, Cal.

February 16th, 1914."

Issued Citation for appearance of respondents, which Citation was afterwards, on March 4th, 1914, returned and filed, with return of U. S. marshal showing service on all respondents.

27. Issued Alias Monition for attachment of the gasoline launch "Seven Bells," which monition was afterwards, on March 23d, 1914, returned and filed with the following return of the U. S. marshal: [4]

"In obedience to the within Monition, I attached the gasoline launch "Seven Bells" therein described, on the 27th day of February, 1914, and have given due notice to all persons claiming the same that this Court will, on the seventeenth (17th) day of March, 1914 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein named gasoline launch 'Seven Bells'; handed to and left

a copy of the within monition with Peter Luque, watchman for the Standard Gas Engine Company of East Oakland, at East Oakland. I further return that I made the seizure in the Estuary, foot of 23d Avenue, East Oakland.

J. B. HOLOHAN,  
United States Marshal.  
By M. J. Fitzgerald,  
Office Deputy.

San Francisco, Cal., February 28th, 1914."

- March        2. Filed exceptions of Halvorsen Transportation Co. et al., respondents and claimants of a certain barge.
5. Filed amended exceptions to libel.
- Filed claim of Halvorsen Transportation Company, a Corp., to a certain barge.
- Filed admiralty stipulation for release of a certain barge, in the sum of \$1600 with Massachusetts Bond & Insurance Co., as Surety.
17. Filed affidavit and order for monition to issue against Standard Gas Engine Company.
- Issued monition against Standard Gas Engine Company, to show cause why a certain gasoline engine, taken from the "Seven Bells" should not be delivered to U. S. Marshal, which monition was, on

March 20th, 1914, *return* and filed, with U. S. Marshal's Return, showing service, endorsed thereon. [5]

March 24. Filed order that Standard Gas Engine Company deliver a certain gasoline engine to U. S. Marshal.

April 9. Filed claim of A. H. Gilmore and Standard Gas Engine Company, a Corp., to the gasoline launch "Seven Bells."

13. Filed answer of claimants A. H. Gilmore and Standard Gas Engine Co.

June 13. This cause this day came on for hearing, upon *resdents'* (Halvorsen Transportation Co. et al.) Exceptions to Libel, after hearing duly had, the Court ordered that the matter stand submitted.

16. The Court this day filed a written order, in which it was ordered that the exceptions to libel be sustained, and allowing libelant ten days within which to amend.

July 6. Filed amended libel.

28. Filed answer of respondents to amended libel.

August 24. Filed answer of claimants of "Seven Bells" to amended libel.

1915.

January 25. This cause this day came on for hearing in the District Court of the United States, for the Northern

District of California, at San Francisco, before the Honorable M. T. Dooling, Judge, and after hearing duly had, was continued until January 29th for further hearing. On said last-mentioned date, after further hearing being had, the matter was submitted to the Court for decision. [6]

- January 29. Filed deposition of Charles R. Codding, taken on behalf of respondents.
- March 4. The Court this day filed an order directing a decree to be entered in favor of libelant, and referring the matter to Francis Krull, Esq., United States Commissioner to ascertain and report the amount due.
- April 1. Filed stipulation that "Seven Bells" be sold.  
Filed order that "Seven Bells" be sold.  
Issued *venditioni exponas* for sale of "Seven Bells."  
Filed interlocutory decree.
15. Filed *venditioni exponas* on return (sold for \$685.00).
- July 6. Filed petition of respondents for rehearing.
- September 25. Filed report of commissioner as to amount due.

- October 2. The Court this day ordered that the report of commissioner be confirmed, and that a decree be entered in the sum of \$2,596.25, together with interest.
22. Filed dismissal as to respondent, A. M. De Vall.
23. The Court this day ordered that the petition for rehearing be denied.
- November 1. Filed final decree.
22. Filed notice of appeal (Halvorsen Transportation Co. et al.).  
Filed notice of appeal (claimants of "Seven Bells").  
Filed bond on appeal (claimants of "Seven Bells") in the aggregate sum of \$300, with The National Surety Company as surety. [7]  
Filed bond on appeal (respondents, Halvorsen Transportation Co. et al.), in the aggregate sum of \$3,500.00, with the American Surety Co. as surety.
- December 8. Filed praecipe for apostles on appeal.
21. Filed stipulation that the same apostles on appeal may be used by all the respondents.
- 1916.
- February 23. Filed assignment of errors (claimants of "Seven Bells").

25. Filed order that all exhibits be sent up on appeal in their original form. Filed one volume of testimony taken in open court.

- March      1. Filed assignment of error (Halvorsen Transportation Company et al.).
2. Filed amended praecipe for apostles on appeal. [7½]
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*In the District Court of the United States, in and for the Northern District of California, First Division.*

IN ADMIRALTY —No. 15,594.

V. J. B. CHEDA,

Libellant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation, J. D. ARKINSON, H. C. HALVORSEN, GEORGE W. DORNING, A. M. DE VALL, C. R. CODDING, G. C. CODDING, and P. S. COLBY, a Certain Barge, and the Gasoline Launch "SEVEN BELLS," Her Engines and Machinery and Appurtenances,

Respondents.

**Amended Libel.**

To the Honorable M. T. DOOLING, Judge of the First Division of the Above-entitled Court:

The libel of V. J. B. Cheda of said district, mer-

chant, against Halvorsen Transportation Company, a corporation and marine carrier, and against the personal defendants in the caption hereof named, each of whom is a stockholder in said corporation, and also against a certain barge at the times hereinafter mentioned operated by said Halvorsen Transportation Company, and also against the gasoline launch "Seven Bells," her engines, machinery and appurtenances, in a cause of damage arising from breach of contract, to wit, failure to deliver goods received for carriage, civil and maritime, allege as follows:

### I.

That at the time of the filing of the original libel herein, [8] the barge in the caption hereof mentioned and the gasoline launch "Seven Bells," her engines and machinery and appurtenances, were lying within the port of San Francisco, in the State of California, within the district of the above-named Honorable Court, and each of the personal defendants in the caption hereof named was a resident of the said Northern District of California, that the occupations of said personal defendants other than that of A. M. De Vall, who is an attorney at law, and George W. Dorning, who is an agent for an insurance company, libellant does not know, nor does he know the particular places of residence of any of said personal defendants within said Northern District of California.

### II.

That on all of the dates and times herein mentioned defendant Halvorsen Transportation Company, was



and now is a corporation, organized and existing under and by virtue of the laws of the State of California, and at the time of the filing of the original libel herein it had its office and principal place of business in the city and county of San Francisco, in the State of California, and carried on the business of a common carrier at said time and on all of the dates and times herein mentioned, in the carriage of goods between the city and county of San Francisco, in said State, and the city of San Rafael, county of Marin, in said State, and the personal defendants in the caption hereof named were stockholders in said corporation and collectively owned all of the subscribed capital stock thereof.

### III.

That said Halvorsen Transportation Company carried on its said business under the name of San Rafael and San Francisco Express Company, and in carrying on its said business of a common carrier it advertised to the people of said San Francisco [9] and the said San Rafael that it was engaged in and it offered to the public of each of said places to carry property between such places.

### IV.

That for the purpose of carrying on such business it used the barge mentioned in the caption hereof, and it also hired and employed towboats to tow said barge, and at the time hereinafter mentioned it hired and employed the said gasoline launch "Seven Bells" as a towboat to tow said barge.

### V.

That under the laws of the State of California, to



wit, section 3 of article XII of the Constitution of said State, and section 322 of the Civil Code thereof, the stockholders who own the subscribed capital stock of a corporation, are primarily liable for the debts and liabilities of a corporation incurred during the time that they are such stockholders in proportion as the amount of such capital stock each owns bears to the whole of the subscribed capital stock of such corporation, that the amount or proportion of capital stock of said Halvorsen Transportation Company that was owned by the individuals and personal respondents herein at the times hereinafter mentioned is unknown to libelant and for that reason he is unable to state the same at this time.

## VI.

That on or about the 31st day of December, 1913, the said Halvorsen Transportation Company received at the city and county of San Francisco, in the State of California, goods and merchandise of the property of the following named persons, which it loaded on board the barge hereinbefore mentioned and as such common carrier it promised to carry to said San Rafael and there safely deliver the same, to wit, wheat belonging to a firm known and called Cheda & Co., of the value of \$587.50, hardware goods [10] belonging to one R. W. Johnson of the value of \$17.47, groceries belonging to a firm or corporation called the Marin Gold Co., of the value of \$40.32, cigars and tobacco and smoking goods belonging to one A. Enos of the value of \$16.99, vegetables belonging to one E. W. Davidson of the value of \$37.41, drugs and chemicals and goods usually sold by drug-

gists belonging to a firm known as the Inman Drug Company, of the value of \$79.41, meats belonging to one Frederick Mehl of the value of \$79.50, toys and stationery goods belonging to one W. H. Jones of the value of \$20.47, groceries belonging to F. L. Von Husen and H. J. Von Husen of the value of \$126.43, wheat and groceries belonging to a corporation known as Grossjean & Co., of the value of \$460.44, dry goods belonging to one J. Alberts of the value of \$60.38, groceries belonging to one F. J. Ward of the value of \$77.55, liquors belonging to a corporation known as Marin County Wine & Liquor Co., of the value of \$113.45, gentlemen's furnishing goods belonging to one James Begley of the value of \$31.05, hardware goods belonging to a corporation known as Scott Hardware Company of the value of \$7.50, groceries belonging to one H. A. Fraser of the value of \$52.45, groceries belonging to a partnership firm doing business under the name of Barnes Bros. of the value of \$108.80, meats belonging to one Chas. Wechesler of the value of \$163.25, groceries belonging to J. D. De Grazia of the value of \$27.65, flour belonging to one J. Riede of the value of \$39.40, liquors belonging to one L. Coda of the value of \$15.12, stationery goods belonging to one Rita Jones of the value of \$25.13, and stationery goods belonging to one R. W. Du Bois of the value of \$155, said values all being the reasonable value of said goods, and also ladies' furnishing goods belonging to one B. de Cuhna of the value of \$74 of like reasonable value.

## VII.

That at the times herein mentioned the said barge

was unfitted to carry said goods in this, that it had an anchor but no [11] anchor chain, and but one man on board when it should have had least two, and after the loading of said goods on said barge the said launch "Seven Bells" undertook to tow the said barge with said goods so on board from said San Francisco, to said San Rafael, that at said time the weather was bad and stormy and unfit weather to make said voyage, and the said gasoline launch was not of sufficient capacity or power to tow said barge at any time, but the master of said launch well knowing that fact took the said barge in tow so laden and proceeded on said voyage, that upon arriving near said San Rafael, the master of said launch negligently and carelessly and without any cause therefor cast off a tow-line with which said launch was towing the said barge so that said launch could no longer tow the same and allowed the said barge with the said goods on board to drift with the wind and tide and said barge having no anchor chain was unable to anchor but drifted ashore by reason of the wind and sea which were heavy and stormy, to wit, both the wind and the sea where the said barge was so cast adrift were heavy and stormy, and the whole of the hereinbefore mentioned goods by reason of the foregoing became lost, and none thereof were delivered to any of the hereinbefore mentioned persons to whom the same belonged, excepting that some of the wheat belonging to Cheda & Co. was delivered to it, damaged and of no ascertainable value.

## VIII.

That on the 5th day of February, 1914, each of the persons mentioned in paragraph VI hereof assigned and set over their and each of their claim and demand for the loss of said goods so belonging to them and lost as aforesaid to libelant and libelant is now the owner and holder of such claims and each thereof and all rights thereunder.

## IX.

All and singular the premises are true and within the [12] admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore libelant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said gasoline vessel "Seven Bells," her engines and machinery and appurtenances, and also against the barge mentioned in the caption hereof, and that all persons claiming any right or interest therein may be cited to appear and answer under oath all and singular the premises aforesaid, and that process in due form of law may issue against the personal and corporation respondents herein, and that they may each be cited to appear and answer under oath all and singular the premises aforesaid, and that this Honorable Court will be pleased to decree the payment of the amounts aforesaid with interest and costs, and that said gasoline launch "Seven Bells," her engines and machinery and appurtenances may be condemned and sold to pay said amounts and that said barge may also be

condemned and sold to pay said amounts, and that libelant may have such other and further relief as the court is competent to give in the premises.

V. J. B. CHEDA,

Libelant.

H. W. HUTTON,

Proctor for Libelant. [13]

United States of America,  
Northern District of California,—

V. J. B. Cheda, being first duly sworn, deposes and says as follows:

I am the libelant above named; I have read the foregoing amended libel and I know the contents thereof and the same is true of my own knowledge except as to the matters therein stated on information or belief, and as to those matters I believe it to be true.

V. J. B. CHEDA.

Subscribed and sworn to before me, this 26th day of June, 1914.

[Seal]

F. J. HEALY,

Notary Public in and for the County of Marin, State of California.

[Endorsed]: Filed, Jul. 2, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]



*In the District Court of the United States, for the  
Northern District of California, First Division.*

IN ADMIRALTY,—No. 15,594.

V. J. B. CHEDA,

Libellant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation, et al., a Certain Barge, and the  
Gasoline Launch "SEVEN BELLS," her En-  
gines and Machinery and Appurtenances,  
Respondents.

**Answer (Halvorsen Transportation Co. et al.).**

To the Honorable M. T. DOOLING, Judge of the Dis-  
trict Court of the United States for the Northern  
District of California:

The answer of the Halvorsen Transportation Co.,  
a corporation, owner and claimant of the barge above  
named, J. D. Arkinson, *used* as J. F. Arkinson, H. C.  
Halvorsen, George W. Dornin, sued as George W.  
Dorning, A. M. De Vall, C. R. Coddling, G. C. Cod-  
ding and P. S. Colby, to the libel of V. J. B. Cheda,  
respectfully shows, as follows:

I.

Answering unto the first, second and third articles  
in the said libel, the claimant and respondents admit  
the same, except that they deny that the personal re-  
spondents named in said libel collectively own all of  
the subscribed capital stock of the said Halvorsen  
Transportation Co.

## II

Answering unto the fourth article in said libel, the claimant and respondents admit the same, and, in this connection, allege that the launch "Seven Bells," therein mentioned, was [15] employed by the claimant to tow the said barge on daily trips to and from the ports of San Francisco and San Rafael; that the said "Seven Bells" was in charge of her own master and had the exclusive control, direction and management of both the said "Seven Bells" and said barge, and that the said barge was manned by a crew selected and appointed by the owners of the said "Seven Bells."

## III.

Answering unto the fifth article in said libel, the claimant and respondents aver that they have no knowledge or information of the matters and things therein alleged, wherefore they call for proof thereof, if the same be relevant.

## IV.

Answering unto the sixth article in said libel, the claimant and respondents admit that on or about the 31st day of December, 1913, the said Halvorsen Transportation Company received at the city and county of San Francisco, State of California, goods and merchandise which it loaded on the said barge and promised to carry to, and safely deliver the same in, the port of San Rafael, but claimant and respondents aver that they have no knowledge or information concerning the ownership of said goods

and merchandise, nor the value of the same, wherefore they call for proof thereof, if the same be relevant.

Further answering said article, claimant and respondents allege that under the bills of lading under which the said goods and merchandise were shipped, the said goods and merchandise were, under the terms of said bills of lading, to be delivered in like good order and condition at the port of San Rafael as when received, except that if due diligence had been used to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, the carrier should not be liable for any loss or damage that should result in whole or in part from the perils of [16] the sea, or other waters, stranding or other accidents of navigation, fault or error in navigation of vessel, fault or error in management of vessel, whether such fault or error was before or after sailing, or was in port or at sea.

#### V.

Claimant and respondents allege that the loss and damage referred to in said libel were caused solely and entirely by the force of the wind and waves and perils of the sea, which, notwithstanding that due diligence had been exercised to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, caused the said barge to drag her anchor, which was immediately dropped and all of the anchor line paid out, when the said barge was so cast adrift by the said "Seven Bells," but, owing to the violence of the wind and waves, the said barge



was driven on to the shore by the wind and sea and it became wrecked, and the goods aboard said barge, by reason thereof, were damaged.

## VI.

Answering unto the seventh article in said libel, the claimant and respondents deny that at the times therein mentioned the said barge was unfitted to carry said, or any, goods; admit that the said barge had an anchor, but no anchor chain, and in this connection the claimant and respondents allege that the said barge was, at all times, equipped with a good and sufficient anchor, and a good and sufficient anchor line; admit that one man was on board of said barge, but deny that there should have been two, or that said "Seven Bells" was not of sufficient capacity or power to tow the said barge at any time; admit that the master of the said "Seven Bells" cast off the tow-line with which the said "Seven Bells" was towing the said barge so that the said "Seven Bells" could no longer tow the same, and allowed the said barge with the said goods on board to drift with the wind and tide, and that said barge had no anchor chain, but deny that said barge was [17] unable to anchor; admit that the said barge drifted ashore by reason of the heavy wind and sea, where the said barge was so cast adrift.

That claimant and respondents aver that they have no knowledge or information in respect to the amount of goods lost, nor the condition of the goods delivered, nor the state of the weather at the time the said "Seven Bells" undertook to tow the said barge to the port of San Rafael from the port of San

Francisco, nor the knowledge of the master of said "Seven Bells" concerning the same, nor the alleged negligence, or carelessness, of the master of the said "Seven Bells," wherefore they call for proof thereof, if the same be relevant.

### VII.

Answering unto the eighth article in said libel, the claimant and respondents aver that they have no knowledge or information with respect to the assignment of the alleged claims, wherefore they call for proof thereof, if the same be relevant.

### VIII.

Answering unto the ninth article in said libel, the claimant and respondents admit the jurisdiction of the Court, but deny that all and singular the premises of said libel are true, except as the same are hereinbefore specifically admitted.

### IX.

Further answering said libel, and as a separate defense thereto, the claimant and respondents allege that the said bills of lading provided that no omission to exercise due diligence, to make the said vessel seaworthy and properly manned, equipped and supplied, should be presumed, but the same must, if claimed or alleged, be proved by the shipper, and that the carrier in no event should be liable for the loss of, or damage to, the contents of any package unless it first be proved by the shipper, and that the carrier in no event should be liable for the loss of, or damage [18] to, the contents of any package unless it first be proved by the shipper that such loss or damage was caused by, or resulted from, the car-

rier's neglect or fault.

The claimant alleges that under the said bills of lading it was further agreed that the carrier and /or the vessel should only be required to exercise due diligence to make the vessel seaworthy in all respects at the time of shipment, commencement of the voyage or on the voyage, and if such due diligence had been used to make the vessel in all respects seaworthy and properly manned, equipped and supplied neither the vessel, owner nor the carrier should become, or be held, liable for damage or loss resulting from unseaworthiness or from any other cause of what kind soever, and that by the said bills of lading said vessel was not warranted seaworthy, save only in so far as the exercise of due care by the carrier in the selection of its agents, superintendents and their attention to their duties had secured, or might secure, it.

#### X.

Further answering said libel, the claimant and respondents allege that under the terms of said bills of lading it was provided that if the carrier was held liable for any damage or loss to the packages shipped, it should *ipso facto*, be subrogated to, and have the benefit of, all insurance procured upon said package. The claimant and respondents allege that they are informed and believe, and upon such information and belief allege, that the libelant carried insurance upon said packages, and under the terms of the said bills of lading the claimant is entitled to the benefit thereof, and offers to set off the amount of said insurance against libelant's demand, if any should be found to exist.

## XI.

Further answering the said libel, the claimant and [19] respondents allege that at all of the times hereinbefore recited the said barge was engaged in transporting merchandise to a port in the United States of America, and that her owners exercised due diligence to make her in all respects seaworthy and properly manned, equipped and supplied, and that accordingly, under the Act of Congress approved February 13, 1893, entitled "AN ACT RELATING TO THE NAVIGATION OF VESSELS, BILLS OF LADING AND CERTAIN OBLIGATIONS, DUTIES AND RIGHTS IN CONNECTION WITH THE CARRIAGE OF PROPERTY," (the Harter Act, so called), the said barge and her owners are not to be held responsible for any damage which may have occurred to the packages shipped and referred to in said libel.

## XII.

Further answering the said libel, the claimant and respondents allege that the said barge was in no way in fault for the loss of, and damage to, said goods and merchandise; that if the said barge should be so found in fault that the same was done, occasioned and incurred without the *proivity* or knowledge of the said Halvorsen Transportation Company, the owner of said barge, and accordingly, under the Act of Congress of March 3, 1851, (The Limited Liability Act, so called), the said owner's liability is limited to the amount or value of its interest in the said barge and freight just after the stranding and wreck, as aforesaid, and that the value of the said

interest is the sum of Four Hundred (400) Dollars.

WHEREFORE, the claimant prays that said libel be dismissed and for its costs incurred herein.

HALVORSEN TRANSPORTATION COMPANY,

By GEO. C. CODDING,  
Secretary,  
Claimant. [20]

J. D. ARKISON.

H. C. HALVORSEN.

A. M. DE VALL.

C. R. CODDING.

GEO. C. CODDING.

GEO. W. DORNIN.

By GEO. C. CODDING,  
Atty. in Fact.

P. S. COLBY,

By GEO. C. CODDING,  
Atty. in Fact,  
Respondents.

IRA S. LILLICK and

O. K. GRAU,

Proctors for Claimant and Respondents.

[21]

United States of America,

Northern District of California,—ss.

Geo. C. Coddington, being first duly sworn, deposes and says that he is an officer, to wit, the secretary of the Halvorsen Transportation Company, a corporation, one of the respondents in the above-entitled action; that he has read the foregoing answer and the same is true except as to those matters therein stated



on information or belief, and as to those matters he believes it to be true.

GEO. C. CODDING.

Subscribed and sworn to before me, this 22d day of July, 1914.

[Seal] LEORA HAIL,  
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed, Jul. 28, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [22]

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*In the District Court of the United States for the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libellant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation, et al., a Certain Barge, and the  
Gasoline Launch "SEVEN BELLS," Her  
Engines and Machinery and Appurtenances,  
Respondents.

**Answer of Claimants of Gasoline Launch "Seven Bells," Her Engines, Machinery and Appurtenances, to Amended Libel.**

To the Honorable M. T. DOOLING, Judge of the District Court of the United States for the Northern District of California:

The Answer of the claimants of the gasoline launch

“Seven Bells,” her engines and machinery and appurtenances, respectfully denies, admits and alleges as follows, to wit:

I.

Answering unto the first article in said Amended Libel, admit the allegations therein so far as they pertain to the gasoline launch “Seven Bells,” her engines, machinery and appurtenances, but as to the remaining allegations therein, allege that they have no information or belief concerning the same sufficient to enable them to make answer thereto, and placing their denial upon that ground, deny each and every one of such allegations. [23]

II.

Answering unto the second article in said Amended Libel, allege that they have no information or belief upon the matters therein set forth sufficient to enable them to answer the same, and placing their denial upon that ground, deny each and every one of said allegations.

III.

Answering unto the third article, allege that they have no information or belief upon the matters therein set forth sufficient to enable them to answer the same, and placing their denial upon that ground deny each and every one of said allegations.

IV.

Answering unto the fourth article of said Amended Libel, admit that at the times in said Amended Libel mentioned, said Halvorsen Transportation Company had hired and employed said gasoline launch “Seven

Bells" as a tow to tow the barge referred to in said article of the Amended Libel.

As to the remaining allegations in said article four, allege that they have no information or belief concerning the same sufficient to enable them to make answer thereunto, and placing their denial upon that ground deny each and every one of said remaining allegations.

#### V.

Answering unto the fifth article in said Amended Libel, allege that they have no information or belief upon the matters therein alleged sufficient to enable them to answer the same, with the exception of the allegation as to the laws of the State of California, and placing their denial upon that ground, deny each and every one of the said allegations with said exception, and allege that said excepted allegation in no way [24] appertains to the gasoline launch "Seven Bells" or her engines, machinery or appurtenances.

#### VI.

Answering unto article six in said Amended Libel, allege that they have no information or belief upon the matters therein set forth sufficient to enable them to answer the same, and placing their denial upon that ground deny each and every one of said allegations and call for strict proof thereof if the same be relevant; and allege that they and neither of them has or have any knowledge or information concerning the ownership of said goods or merchandise, nor concerning the value of the same, wherefore they



call for proof thereof if the same be relevant.

## VII.

Answering unto the seventh article of the said Amended Libel, admit that said gasoline launch "Seven Bells" undertook to tow said barge with goods on board from San Francisco to San Rafael; deny that at the time said voyage was undertaken the weather was bad and stormy and unfit, or bad or stormy or unfit to make said voyage; deny that said gasoline launch was not of sufficient capacity or power to tow said barge at any or at such time; admit that the master of said launch took the said barge in tow laden with goods and proceeded on such voyage; deny that the master of said launch well or at all knew that said gasoline launch was not of sufficient capacity or power to tow said barge at any or such time; admit that upon arriving near San Rafael the master of said launch cast off the tow-line with which said launch was towing said barge, so that said launch could no longer tow the same; deny that said tow-line was negligently or carelessly or without any cause therefor cast off; admit that said barge drifted ashore by reason of the wind and sea, which were heavy and stormy, where the said barge was so separated from said launch; deny that said launch or the master thereof allowed said barge with the goods on board to drift with the wind and tide otherwise than as [25] herein expressly admitted; admit that said barge had no anchor-chain, but allege that said barge had on board an anchor line; admit that said barge was unable to anchor, for the reasons hereinafter specified; allege that they have no in-

formation or belief as to whether or not the whole of the goods mentioned in said libel became lost, for the reasons therein alleged, or as to whether any of such goods were delivered to any of the persons mentioned in said libel, or as to whether the same belong to any such persons, and placing their denial upon that ground deny the allegations with reference to said matters; and upon the last-named ground deny that any of the wheat belonging to Cheda & Company was delivered to it in damaged condition, or that when delivered it was of no ascertainable value.

Allege that the loss and damage referred to in said Amended Libel were caused solely and entirely by accident and by the act of God and the perils of the sea, in this, that said loss and damage were caused solely and entirely by the force of the winds and waves and perils of the sea, which, notwithstanding that due diligence had been exercised to make said gasoline launch in all respects seaworthy and properly manned, equipped and supplied, and notwithstanding that said *gasoline* was properly manned, equipped and supplied, rendered it necessary and imperative for the master to cast off the tow-line to said launch in order to save both said gasoline launch and said barge and the cargo thereon from immediate destruction; that there was no negligence whatever upon the part of said launch or her captain or her master or her crew; that said gasoline launch "Seven Bells" did not cast off said tow-line until it was rendered absolutely unsafe both to said launch and said barge and her cargo for it to remain longer between them; that upon the casting off of said tow-

line the master of said launch instructed the man upon said barge to immediately drop the anchor of said barge, and that said anchor was thereupon dropped and all of the anchor line payed out as necessary, but [26] owing to the violence of the wind and waves, and wholly without negligence on the part of the said gasoline launch "Seven Bells," her captain or crew, the anchor of said barge dragged and said barge was driven upon the shore by the wind and sea and became to some extent wrecked, and the goods on board said barge, if damaged at all, were damaged by reason thereof; that the aforesaid course pursued by the master of said gasoline launch was a safe and proper course to pursue under the circumstances, and the only safe and proper course to pursue thereunder for the safety and preservation of said barge and of said goods thereon and of said launch; that had said course not been pursued said barge, said goods and said launch would have been immediately wholly destroyed, and that said course was pursued as the only available one for the purpose of saving said launch and the goods thereon.

That they have no knowledge or information in respect to the amount of goods lost, nor the condition of the goods delivered, nor the condition in which said goods were shipped, wherefore they call for full proof thereof, if the same be relevant.

### VIII.

Answering unto the eighth article of said Amended Libel, allege that they have no knowledge or information with respect to the matters therein al-

leged, and placing their denial upon that ground deny each of said allegations and call for proof thereof if the same be relevant.

### IX.

Answering unto the ninth article of said Amended Libel, admit the jurisdiction of this Court, but deny that all and singular of the terms of said libel are true except as hereinbefore specifically admitted.

WHEREFORE claimants pray that said libel be dismissed and [27] for their costs incurred therein, and for such other and further relief as may seem just and proper.

I. F. CHAPMAN,  
ANDROS & HENGSTLER,  
GOLDEN W. BELL,

Proctors for Claimant.

State of California,

City and County of San Francisco,—ss.

A. H. Gilmore, being first duly sworn, says that he is one of the claimants herein of the gasoline launch "Seven Bells," her engines, machinery and appurtenances; that he has read the foregoing Auswer and the same is true except as to those matters therein stated on information or belief and as to those matters he believes it to be true.

A. H. GILMORE.

Subscribed and sworn to before me, this 24th day of August, 1914.

CHARLES R. HOLTON,  
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 24, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [28]

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*In the District Court of the United States, in and for  
the Northern District of California, First Divi-  
sion.*

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION COMPANY  
et al, etc.,

Respondents.

**(Deposition of Charles Rolling Coddington [for  
Respondent].)**

BE IT REMEMBERED, that on Thursday, January 28th, 1915, pursuant to stipulation of counsel hereunto annexed, at my office, Room 308 of the United States Courthouse and Postoffice Building, Seventh and Stevenson Streets, in the city and county of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., Charles Rolling Coddington, a witness produced on behalf of respondents.

H. W. Hutton, Esq., appeared as proctor for the libelant, I. F. Chapman, Esq., Messrs. Andros & Hengstler, Golden W. Bell, Esq., for the launch "Seven Bells," and O. K. Grau, Esq., and Ira S. Lillick, Esq., for the respondents, and the said witness having



(Deposition of Charles R. Coddling.)

been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth, [29]

(It is hereby stipulated and agreed by and between the proctors for the respective parties, that the deposition of the above-named witness may be taken *de bene esse* on behalf of the respondents at the office of Francis Krull, Room 308 of the United States Courthouse and Postoffice Building, Seventh and Stevenson Streets, in the city and county of San Francisco, State of California, on Thursday, January 28th, 1915, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Herbert Bennett.

It is further stipulated that the deposition, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [30]

CHARLES R. CODDING, called for the respondents, sworn.

Mr. LILLICK.—Q. What is your full name?



(Deposition of Charles R. Coddling.)

A. Charles Rolling Coddling.

Q. What connection, if any, have you with the Halvorsen Transportation Company?

A. Small stockholder at the present time, one share.

Q. Upon the 30th day of December, 1913, the day before the loss of the goods upon the barge "Seven Bells," what was your connection with the Halvorsen Transportation Company?

A. I was acting manager for the San Francisco end.

Q. Where was the office of the Halvorsen Transportation Company in San Francisco?

A. Jackson Street bulkhead.

Q. Do you remember the occasion of the loss, as to what time it took place?

A. The time the boat was wrecked?

Q. Yes.

A. Well, only by telephone; it would be around 11 or 12 o'clock.

Q. Of what day; do you remember the day?

A. No, I could not recall the day.

Q. It was in the latter part of December, 1913?

A. The latter part of the year; I think the last day of the year.

Q. Do you know what time the launch and the barge started from San Francisco?

A. Only from hearsay; around about 8 o'clock.

Q. Do you remember that there was a storm upon the day before?      A. Yes, sir.

Q. And what was the situation after that storm

(Deposition of Charles R. Coddling.)

had arisen upon the day before with reference to the launch and the barge leaving San Francisco? [31]

A. We loaded the barge, got it loaded about seven o'clock in the evening,—

Mr. HUTTON.—All that is in evidence; that has all been proved; there is no contradiction of that, that she loaded the night before and put back and anchored at the sea wall; there is no contradiction to that.

A. (Contg.) —I told the captain not to leave until the weather had moderated; not to leave in the storm.

Mr. LILLICK.—Q. About what time was that you told the captain?

A. Along about seven o'clock in the evening.

Q. Of the day before the loss?

A. Yes, sir, the day before.

Q. Who was the captain to whom you gave that instruction? A. Gillmore.

Q. What did you do then; did you go home?

A. Home.

Q. Upon that night, or upon the following morning, did you receive any message over the telephone or otherwise from San Rafael with reference to the weather? A. No, sir.

Q. Upon the following morning, that is, upon the morning of the day the loss occurred, did you receive any telephone message or otherwise other message from San Rafael with reference to the weather, or with reference to the launch and the barge?

A. Only after 9 o'clock when I arrived at the office

(Deposition of Charles R. Coddling.)

I called up the San Rafael office to see if the barge had landed in San Rafael.

Q. Did you know anything prior to that time about what time the launch started from San Francisco in the morning?

A. No, sir. I tried to find out from the watchman and the watchman did not know because they had left from another wharf.

Q. And did the watchman tell you from what wharf they had left? [32]

A. No, sir; he did not know that.

Q. Did you attempt to find out from what dock they were leaving?

A. Mr. Gilmore said himself they were leaving from the end of Pier 5; that is next pier to us out at the end.

Q. When did he tell you that?

A. The next time I saw him; within a day or two in San Rafael.

Q. And you knew nothing about it that night?

A. No, sir.

Q. And you knew nothing until you telephoned over to San Rafael?

A. When Mr. O'Brien told me.

Q. When Mr. O'Brien told you? A. Yes, sir.

Q. What time did that conversation occur?

A. That occurred between 10 and 11 o'clock; something of that kind.

Q. Did Mr. O'Brien over the telephone say anything to you about having telephoned to you to your house that morning early? A. No, sir.

(Deposition of Charles R. Coddington.)

Q. Did he say anything at all about having tried to reach you before the conversation that you had with him at that time?      A. No, sir.

Cross-examination.

Mr. HUTTON.—Q. Who were the stockholders in the Halvorsen Transportation Company?

Mr. LILLICK.—Objected to on the ground the books are the best evidence. I do not think we need go into that. If there is any question about that we will take it up later; certainly this witness cannot testify about it.

Mr. HUTTON.—Q. How much did you own?

A. One share.

Q. Do you know who owned the rest, of your own knowledge?

A. I do not know about the exact shares that they owned.

Q. Do you know about how much your brother owned?

A. At that time? [33]

Q. Yes.

A. No, sir; I do not. I know what he owns now.

Q. Did you own one share at that time personally?

A. Me?

A. Yes.      A. Yes, sir.

Q. Never owned any more?

A. Never owned any more; no, sir.

Q. Did you have a launch called the "Gray Eagle"?

A. "Golden Eagle."

Q. Where was she at that day?

A. Tied at the wharf.

Q. Did she stay there all night?

(Deposition of Charles R. Coddington.)

A. Stayed there all night.

Mr. HUTTON.—That is all.

Mr. CHAPMAN.—Q. How big a boat was this “Golden Eagle”?

A. About 50 foot and 13-foot six beam.

Q. What horse-power?      A. 70.

Q. What business was she engaged in at the time of this wreck?

A. Towing business; barging business for heavy freighting.

Q. Did she ever tow to San Rafael?

A. Yes, sir, she has been to San Rafael once or twice; she is too deep draught though.

Q. Too deep to get in?      A. Yes, sir.

Mr. CHAPMAN.—That is all.

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I certify that in pursuance of the stipulation hereunto annexed, on Thursday, January 28th, 1915, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at my office, room 308 of the United States Courthouse and Postoffice Building, Seventh and Stevenson Streets, in the city and county of San Francisco, State of [34] California, personally appeared Charles Rolling Coddington, a witness called on behalf of the respondents in the cause entitled in the caption hereof, and H. W. Hutton, Esq., appeared as proctor for the libellant, I. F. Chapman, Esq., Messrs. Andros & Hengstler, Golden W. Bell,

Esq., appeared for the launch "Seven Bells," and O. K. Grau, Esq., and Ira S. Lillick, Esq., appeared as proctors for the respondents; and that the said witness being by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the said deposition was then and there taken down in shorthand notes by Herbert Bennett, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors the reading over of the deposition to the witness and the signing thereof was expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the clerk of the United States District Court for the Northern District of California.

I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand at my office aforesaid, this 29th day of January, 1915.

[Seal]

FRANCIS KRULL,

U. S. Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Jan. 29, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [35]



**(Testimony Taken in Open Court.)**

*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

Before Hon. MAURICE T. DOOLING, Judge.

No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVERSEN TRANSPORTATION COMPANY,

Respondent.

Monday, January 25, 1915.

Counsel Appealing:

For Libelant: H. W. HUTTON, Esq.

For Respondent: GOLDEN W. BELL, Esq.,  
IRA S. LILLICK, Esq., I. F. CHAP-  
MAN, Esq.

**[Statement of Proctor for Libelant.]**

Mr. HUTTON.—This is an action, if your Honor please, brought by Mr. Cheda, the assignee of several merchants and others who are doing business in San Rafael, for damages for loss of certain cargo shipped from San Francisco to San Rafael and carried on a [36] boat that was operated by the Halversen Transportation Company, and towed by a vessel called the “Seven Bells.” Our contention is that the weather was bad at the time, and the master should not have left San Francisco under the circumstances. The proof we expect to show is that the weather was threatening in the morning,

and he could have expected bad weather at that time in the morning, and he left and started over when he should not have started. The towboat was not of sufficient power to handle the barge, and the result was they got into a storm, drifted past San Rafael, the towboat got lost, the barge went ashore, some of the cargo was washed overboard, some went on the rocks, and quite a quantity of it was stolen afterwards through the negligence of the Helvorsen Transportation Company, and some they sold and kept the money. The understanding was originally. I think, that we should just simply try the question as to whether there was any liability here, because there are a number of different claims, as to whether, under any circumstances, there would be any liability, and if your Honor should determine there was, that then the other question should go to the commissioner for proof. The answer practically admits the receipt of the cargo.

Mr. BELL.—I would like to make a brief statement, your Honor. Mr. Chapman and myself represent the hull and the engine on the vessel, and Mr. Lillick represents the transportation company. The facts were that the barge upon which the cargo was loaded was being towed by the launch, and both the Halvorsen Transportation Company and the towboat which was towing the barge are being sued here by cargo owners, a triangular situation.

**[Testimony of Joe Silva, for Libelant.]**

JOE SILVA, called for the libelant, sworn. [37]

Mr. LILLICK.—Mr. Hutton, will you admit the incorporation of the Halversen Transportation Company?

Mr. HUTTON.—It is pleaded and not denied.

Mr. LILLICK.—It is admitted that the Halversen Transportation Company is a corporation.

Mr. HUTTON.—Q. What is your name?

A. Joe Silva.

Q. What has been your occupation?

A. Working on steamboats.

Q. You knew this barge, the Halversen Transportation Company's barge? A. Yes, sir.

Q. You worked on her at one time?

A. I worked there about three or four months, yes.

Q. You have met with an accident since then, have you? A. Yes, sir.

Q. At that time you had both of your lower extremities, your legs? A. Yes, sir.

Q. What were you doing on that barge?

A. Deckhand man.

Q. Where did the barge run at the time you were on her, where did she go to?

A. Going to San Rafael. We go all over the pick up freight on the seawall and at other places.

Q. Do you remember the time the barge went ashore? A. Yes, sir.

Q. Where had you left her before she went ashore, what place did the barge go from?

A. From Point Pedro, McNear's Point.

(Testimony of Joe Silva.)

Q. Where did she lie?

A. About half a block from shore.

Q. Had you been in San Francisco before that?

A. Yes, I had been in San Francisco before that.

Q. When were you in San Francisco before the barge went ashore?

The COURT.—Q. Did the barge start from San Francisco?

A. Yes, sir; she started from San Francisco. She started the night before. She could not make it, and she had to come back.

Mr. HUTTON.—Q. What place did you start from? A. From the seawall. [38]

Q. Had you been at any other wharf before that?

A. Yes, at the Jackson Street bulkhead.

Q. At the Jackson Street wharf did you take on any cargo? A. Yes, sir.

Q. When did you commence to take on cargo, at what time? A. In the afternoon.

Q. Of the day before the barge was lost?

A. Yes, sir.

Q. Do you remember what day that was?

A. Yes, sir.

Q. What date was it?

A. On the 30th, one year from last December.

Q. On the 30th of December, the year before last?

A. Yes, sir.

Q. How much cargo did you take aboard?

A. We had some wheat, some groceries, and meat and beer and whisky, all kinds of stuff inside, and some wheat, too.

(Testimony of Joe Silva.)

Q. Did you have much cargo?

A. Yes, she had a pretty good load.

Q. How much is a good load?      A. I don't know.

Q. Was the barge a large barge, or a small barge?

A. A pretty big barge.

Q. What time of the day was it you left Jackson Street wharf?

A. About seven o'clock in the evening.

Q. And where did you go?

A. We went off Alcatraz, and it was pretty bad weather, and we had to come back again, and made the barge fast to the seawall and left next morning about half-past seven or eight o'clock.

Q. How far out did you get before you came back to the seawall?      A. Alcatraz.

Q. What made you come back, why did you come back?      A. We came back to the seawall again.

Q. What for?

A. Because it was rough that night.

Q. What time did you get back to the seawall?

A. About ten o'clock or half-past ten, I don't know exactly what time.

Q. And you tied up at the seawall?

A. Yes, sir. [39]

Q. How was the weather when you tied up?

A. It was rough, it was pretty heavy.

Q. How was it the next morning?

A. It looks pretty bad. After we left there, the wind started pretty strong again.

Q. When you left the seawall the next morning, did you have any talk with the captain of the tow-boat?      A. Yes, I talked to the captain.

(Testimony of Joe Silva.)

Q. At what time?

A. About half-past seven or eight o'clock.

Q. What did you say to him?

A. I asked the captain if he thought he could make it on that kind of weather, and he said, "Yes, I think I can make it, because daytime is better than night-time, I think I will make it"; and he said, "Let go the lines." and I let go the lines. After he left there the wind started pretty strong again.

Q. How was the sea at the time you left the seawall?     A. It looks bad, like the night before.

Q. How was the wind?

A. There was a little wind; she ain't very strong at that time.

Q. What direction was it blowing from, what way was it coming, was it a west wind, a norther wind or south wind?     A. A southeast.

Q. When you left the seawall, what towboat towed you?     A. "Seven Bells."

Q. Who was the captain?

A. Captain Gilmore. I don't know his right name, but I think he told me it was Captain Gilmore.

Q. Was he the man you talked to about the weather?     A. Yes, sir.

Q. Did you start across the bay?

A. Yes, he started across,

Q. How did you get along?

A. He got along pretty near all right for the first couple of hours; after about nine o'clock or half-past nine the wind was pretty strong. [40]

Q. How far had you got then?



(Testimony of Joe Silva.)

A. We came pretty near across the San Rafael Flats.

Q. What part of the waters were you in then?

A. In San Rafael Flats.

Q. Yes, but were you in San Pablo Bay or San Francisco Bay when you got to the San Rafael Flats? A. San Francisco Bay.

Q. When you got over there, how was the wind, was it stronger or weaker than it was when you left the seawall? A. It was pretty strong.

Q. How was the sea? A. It was pretty rough.

Q. Is there much water there at those San Rafael flats?

A. No. Sometimes you have about four or five feet of water there. There is a little channel there, and that is all. You have to heed the tides, so you can make it.

Q. How close did you get to shore while the towboat had hold of you?

A. You mean on the San Rafael flats?

Q. Did the towboat finally let go of your barge?

A. Yes, sir.

Q. How close to the shore were you then?

A. About half a block or a block from shore.

Q. How did you get in so close to the shore? How did you come to get in so close?

A. The captain would know, because he was running the towboat.

Q. When you got within half a block or a block, as you say, of the flats, what, if anything, did the towboat do? A. That is more than I can tell you.

(Testimony of Joe Silva.)

Q. In what way?

A. About one block from the shore the captain said to throw the tow-line overboard, the lines.

Q. On the towboat end?      A. Yes, sir.

Q. How long was the tow-line?

A. About 50 or 70 feet, or something like that.  
[41]

Q. Whereabouts were you then with reference to San Rafael, had you passed San Rafael, or were you on the San Francisco side of San Rafael?

A. We were pretty near to San Rafael, we were right near the marine locks there.

Q. I mean, were you on the other side of San Rafael or on the San Francisco side of San Rafael?

A. We went on the other side, the Petaluma side, about 100 feet.

Q. What made the barge get so close to the shore?

A. I don't know. It was pretty rough; that is all I can tell you.

Q. Could the towboat haul the barge up against the sea?

A. Yes, the towboat I don't think is strong enough in that kind of weather.

Q. I ask you, did she hold the barge up against the sea on that occasion? Did you drift any while the towboat had hold of you?

A. Drift—what do you mean, did we go on the rocks?

Q. Did the barge pull the towboat, or did the towboat pull the barge?

A. The towboat pulled the barge up to San Rafael.

(Testimony of Joe Silva.)

Q. Was she able to hold the barge up against the sea?     A. Yes, sir.

Q. Well, did she hold it up?

A. No, the barge dragged from one side to the other.

Q. Was the towboat able to hold her then in the sea?     A. I don't know.

Q. After the towboat let go of the hawser, what became of the barge?

A. The wind blowed her on top of the rocks.

Q. Did you have any anchor?     A. Yes, sir.

Q. Any anchor chain?

A. No, sir; no chain at all.

Q. Did you drop the anchor over?

A. I took the rope and made it fast and dropped the anchor overboard.

Q. How long did it take you to fasten the rope?

A. Well, it took me about five minutes or ten minutes.

Q. To anchor?

A. Yes; I threw the anchor overboard. [42]

Q. And then you dropped the anchor over?

A. We could not save the barge, because she was pretty near on top of the rocks already.

Q. How big a rope was it you tied to the anchor?

A. About a 25 or 40 foot rope.

Q. How big around was it?

A. About 5 or 6 inches, I guess.

Q. How heavy was the anchor?

A. About 150 or 175 pounds.

Q. When the barge went on top of the rocks, what

(Testimony of Joe Silva.)

became of the cargo?

A. The cargo pretty near got overboard, pretty near all the stuff went overboard.

Q. What happened to you, what did you do?

A. I stayed on board the barge; I stayed at the head of the barge.

Q. Did you stay there all the time?

A. About three-quarters of an hour, or something like that.

Q. Then what did you do?

A. Then I jumped overboard and swam ashore and tried to save my life, because the barge was pretty near all smashed up, everything went overboard.

Q. Had all the cargo got off the vessel at that time?

A. No, sir; some stuff stayed inside, some wheat and some other kind of stuff.

Q. How hard was it blowing at that time?

A. Pretty strong. It was pretty rough at that time.

Q. Did it make much sea?      A. You bet.

Q. What became of the towboat?

A. I guess he went to San Rafael.

Q. Did you see her again that day?

A. I seen her that day in San Rafael.

Q. How long did you stay where the barge was after you swam around?

A. I stayed ashore about an hour. [43]

Q. Then where did you go?

A. I didn't know that place, I had never been to

(Testimony of Joe Silva.)

that place before; I stayed there and I seen a man coming and I asked him, "What place this is?" and he said, "McNear's Point." I said, "Any place I can telephone to San Rafael?" And he said, "Yes; you go in the office in the brickyard and telephone." I went there and asked the man to make a telephone to San Rafael and he said, "Yes," and I said, "I will telephone to San Rafael Transportation," and he told Mr. O'Brien up there to come and get me because I am all sick and wet.

Q. Who is Mr. O'Brien?

A. He is working the office.

Q. What office?

A. In the San Rafael Transportation.

Q. You mean the Halversen Transportation?

A. Yes, sir.

Q. Did Mr. O'Brien come to the barge?

A. He came down and brought a couple of wagons.

Q. Did you go to San Rafael, or did you go back to the barge?

A. I was there at the brickyard for a couple of hours; as soon as Mr. O'Brien came down and he saw the barge on top of the rocks, he could not get on the barge because it was all full of water, and there were rocks there.

Q. When did you last see the barge on the rocks? Were you around there the next day?

A. Yes, I went there the next day, too.

Q. What became of the cargo?

A. The rest of the stuff—he took a car down there, he was going to get the rest of the stuff, he got some

(Testimony of Joe Silva.)

wheat and something of another kind of stuff inside.

Q. What became of the rest of it, if you know?

Did you see any of the cargo up at the brickyard?

A. No, I seen it in the water.

Q. What time did the barge go ashore?

A. About 12 or half-past 12.

Q. Was it raining?

A. Yes, it rained pretty strong, too.

Q. Was it raining when you left that morning?

A. No, no rain at [44] all; it started to rain at nine o'clock, or something like that.

Q. Was it raining hard or otherwise?

A. Pretty strong.

Q. Was it raining the night before?      A. No.

Q. Was the sea heavy enough to wash over the barge?      A. Sure.

Q. Did it wash over the barge when the "Seven Bells" was towing her, before you went ashore?

A. Yes, sir.

Q. At what place did the sea commence to wash over the barge, where was the barge then?

A. It was going through above.

Q. After you left San Francisco, how far had you got when the sea first began to wash over the barge?

A. We got about to California City.

#### Cross-examination.

Mr. LILLICK.—Q. You say the water washed over the barge first when you got to California City. How far is California City from where she went ashore?

A. I don't know, I can't tell, but about six or seven



(Testimony of Joe Silva.)

miles, something like that.

Q. You think six or seven miles?

A. Something like that; I don't know.

Q. When you were going across the bay, here, none of the waves washed up on board, did they? Between the seawall and Alcatraz washed up on the barge? A. It came on the left side.

Q. But that was not until you got up by California City, was it? A. Yes, by California City.

Q. Up to that time you went along all right?

A. Yes, sir.

Q. The barge was a good barge, wasn't she?

A. Yes, sir.

Q. Pretty nearly new? A. Yes, sir.

Q. Didn't leak at all? A. No.

Q. How long had you worked on her before this happened? A. About three or four months.

Q. During the three or four months you went over there every day, didn't you? A. Yes, sir. [45]

Q. And sometimes came back at night?

A. Yes.

Q. During all that time she never leaked at all?

A. No, sir.

Q. That barge had a little house on it?

A. Yes, sir.

Q. And the cargo was inside that house?

A. Yes, sir.

Q. Covered over so that water could not get in?

A. It is covered over in front, but she had a door.

Q. And with a big space in front for wagons to be on? A. Yes, sir.

(Testimony of Joe Silva.)

Q. You said that the rope on the anchor was 5 or 6 inches big. What do you mean by 5 or 6 inches—show us?

A. About that big around. (Indicating.)

Q. You could tie a knot in it very easily, couldn't you? A. Yes, sir.

Q. Are you sure it was only 25 or 40 feet long?

A. About that.

Q. Wasn't it long enough so that it went out quite a long distance after you threw the anchor over?

A. We didn't use that for anchor; we only used that to make the barge fast.

Q. You said it took you about 5 or 10 minutes to drop that anchor over. Do you mean that, that it took you 5 or 10 minutes to drop the anchor over?

A. Yes, sir.

Q. Where was the anchor on the barge?

A. In front.

Q. What did you have to do—just to lift it up and drop it over?

A. No, sir, I had to make the rope fast and roll it up, because it was about 3 or 4 feet.

Q. You just rolled it over? A. Yes, sir.

Q. You took it up first on one side and then on the other and threw it overboard? A. Yes, sir.

A. A very heavy anchor, wasn't it?

A. Yes, about 150 or 175 pounds.

Q. That is what you think about it?

A. Yes, sir.

Q. You don't know that, though, do you?

A. No, sir. [46]

(Testimony of Joe Silva.)

Mr. BELL.—Q. During the time you were on that barge, had the “Seven Bells” been towing her?

A. Yes, sir.

Q. On other trips? A. Yes, sir.

Q. All the time you were on that barge, did the “Seven Bells” tow her? A. No.

Q. What other boat beside the “Seven Bells” towed her?

A. I don’t know; at the time I was working, the “Seven Bells” towed her.

Q. At the time you were working there the “Seven Bells” towed her? A. Yes, sir.

Q. The “Seven Bells” towed her from San Francisco to San Rafael during all that time?

A. Yes, sir.

Q. The “Seven Bells” was a good boat?

A. She looked like a pretty good boat.

Q. Did you ever go ashore before this time?

A. No.

Q. That was the first time? A. Yes.

Q. Between San Francisco and Alcatraz Island on this trip, you didn’t have any trouble, did you?

A. No.

Q. Everything went all right until you got to California City? A. Yes, sir.

Q. And then the wind came up very heavy?

A. Yes, sir.

Q. Very suddenly? A. Yes, sir.

Q. It was an extraordinary wind, was it not, a very hard wind? A. Yes, pretty strong.

Q. Stronger than usual, wasn’t it?

(Testimony of Joe Silva.)

A. No fooling.

The COURT.—Is California City on the Marin County shore?

Mr. LILLICK.—It is the coaling station for the Government.

Mr. CHAPMAN.—You don't object to using the official chart of San Francisco Bay, do you, Mr. Hutton?

Mr. HUTTON.—No.

Mr. CHAPMAN.—Here is the seawall; here is Alcatraz; here is California City. [47]

Mr. BELL.—Q. Had you ever seen as hard a wind as this before over there?

A. Yes, I seen more than that, but I did not work on that barge.

Q. You did not work on that barge?

A. No. At the time I worked on the barge that was the strongest one I caught there.

Q. That was an unusual wind, wasn't it?

A. Yes, sir.

Q. At the time you left San Francisco it was about seven o'clock that morning?

A. Seven or eight o'clock, or something like that.

Q. And at that time it was not raining?

A. No, sir.

Q. Was it cloudy? A. Yes, sir.

Q. But there was no wind at that time?

A. Just a little, not much.

Q. Just a little breeze? A. Just a little breeze.

Q. And there was no stronger wind until you got to Alcatraz, was there? A. No.

(Testimony of Joe Silva.)

Q. And until you got to California City there was no strong wind?

A. We went pretty good to California City.

Q. What time did you get to California City?

A. About nine or half-past nine.

Q. And then when you got to California City suddenly the stronger wind came up? A. Yes, sir.

Q. And the seas began to wash over the barge?

A. Yes, sir.

Q. From California City you went on toward the mouth of San Rafael slough? A. Yes, sir.

Q. Will you show us on the map where San Rafael slough is. A. I cannot tell you.

Q. You are not familiar with this map? A. No.

Q. Do you recognize this as the San Rafael Creek, and these as the Marin Islands, and this as McNear's Point?

The COURT.—If the witness is not familiar with the map he cannot give us much information about it. [48]

Mr. BELL.—Q. How close did you get to the mouth of San Rafael Creek?

A. About to the Marin rocks.

Q. Which side of the Marin rocks did you come in there on? A. On the right side.

Q. That is toward the bay from the rocks, or toward the shore from the rocks?

A. The rocks are on this side.

Q. Did you come between the rocks, and the mouth of San Rafael Creek?

A. No, you go on this side.

(Testimony of Joe Silva.)

Q. That is, on the outside of the Marin rocks?

A. Yes, sir.

Q. Are you sure of that? Are you sure you did not come between Marin rocks and the mouth of San Rafael Creek?

A. No, no. The creek is on this side and Marin rocks are on this side.

The COURT.—Q. Did you go between them?

A. We went on this side.

Mr. BELL.—Q. Let us say this is the creek, and this is Marin rocks, on which side did you go?

A. On this side.

Q. That is, between the two?

A. There was one on this side and one on this side.

Q. This is San Rafael Creek, and this is Marin rocks; you came between them, did you? A. Yes.

Q. How close did you get to the mouth of San Rafael Creek? You were nearer the mouth of the creek than you were to the Marin rocks, weren't you?

A. Yes, sir.

Q. About how far from the mouth of San Rafael Creek were you at the nearest time?

A. About two or three blocks, I guess, two blocks.

Q. Why couldn't you go in there to San Rafael Creek? A. I don't know.

Q. Did you see the condition there?

A. I don't know nothing about it. [49]

Q. You didn't look to see what the condition was in the mouth of the creek?

A. I seen the wind was blowing pretty strong, it



(Testimony of Joe Silva.)

was pretty rough, and I seen the captain going on the other side.

Q. You knew when you started out that you were going to San Rafael?     A. Yes, sir.

Q. It is very shallow around the mouth of the creek, is it not?

A. Yes, you have to wait sometime for the tide.

Q. How was the tide at the time you were off the mouth of the creek?     A. The tide that day?

Q. Yes.     A. I don't know.

Q. You don't remember?

A. No, but it was a flood tide.

Q. How wide is the channel going into San Rafael Creek?     A. About 4 or 5 feet.

Q. And on each side of that there are flats?

A. Yes, sir.

Q. You went up the mouth of San Rafael Creek?

A. On that day?

Q. You didn't go in it, but you went by it?

A. We went on this side.

Q. Where did you go ashore?

A. On McNear's Point.

Q. How far from the end of that point did you go ashore?

A. They call that place McNear's Point. I was never there before, and I don't know much about that place.

Q. You had never been there before?     A. No.

Q. How near did you go to the Marin Islands?

A. Between the rocks.

Q. You mean you went between one of those rocks

(Testimony of Joe Silva.)

and the other rock?

A. Yes, from the other side; I guess he went between those rocks.

Q. You don't mean that you went between the two rocks, do you? You didn't go between the two Marin rocks?

A. I guess he did. I don't know for sure. I think he went between those two rocks. [50]

Q. When the tow-line was dropped, which end of it was dropped? A. The end to the boat.

Q. The end that was on your boat?

A. No, the end that was on the towboat.

Q. Did you haul in that line, then?

A. No, I didn't touch that line at all, I left it drag.

Q. Did the captain say anything to you before he dropped it? A. He never said anything.

Q. Are you sure of that? A. Yes, I am sure.

Q. What were you doing at the time he dropped that?

A. I took the line and tried to make fast to the anchor, and I dropped the anchor overboard.

Q. Had you started to make that line fast to the anchor before they dropped you? A. No.

Q. How soon did you know that you had been dropped after they let the line go?

A. About five or ten minutes.

Q. You didn't know you had been dropped for five or ten minutes?

The COURT.—He means he dropped the anchor five or ten minutes afterwards.

Mr. BELL.—Q. How long was it between the time

(Testimony of Joe Silva.)

they left the line loose on the launch and the time you knew about it?

A. I saw them turn it loose.

Q. And then you went and made the line fast to the anchor and dropped the anchor over?

A. Yes, sir.

Q. If the anchor had held, would you have been all right?

A. At the time I dropped the anchor overboard, I didn't have much time, and as soon as I made the line fast the barge was on top of the rocks already.

Q. How long was this line that you attached to the anchor?     A. About 30 or 40 feet long.

Q. Was that the only line on the boat?

A. Yes, one forward and [51] one astern.

Q. And the anchor was let go from the stern of the boat, was it?     A. No, at the head.

Q. At the head of the boat?     A. Yes, sir.

Q. How long after the anchor had been let go by you was it before the boat got ashore?

A. The barge?

Q. Yes.     A. In about 100 feet.

Q. Before you let the anchor go, had the barge been pounding on the bottom?

A. Yes. At the time I left the anchor go overboard the barge was on top of the rocks already.

Q. How long before that had it touched bottom? Before you put the anchor out had the barge touched bottom?

A. No; just when I dropped the anchor I seen the barge on the rocks already.

(Testimony of Joe Silva.)

Q. If the launch had not dropped the line, the launch and the barge both would have gone ashore, would they not?

Mr. HUTTON.—That is purely speculative.

A. I don't know; that is more than I can tell you.

Q. How many trips did you make when the "Seven Bells" was towing that barge?

A. I don't know how many.

Q. But for about four months?

A. For about three or four months.

Q. How many trips did you generally make in a day?     A. One trip a day.

Q. Almost every day?

A. Almost every day. Sometimes, if we missed one, we might make one in the daytime and one in the night-time, because we had to wait for the tide.

Q. When Mr. Gilmore was talking to you on the morning you left San Francisco, what did you say to him?

A. I said, "Do you think you are going to make it"? And he said, "Yes, I guess I can make it, because I can go better in the daytime than in the night-time." [52]

Q. Everything at that time looked all right?

A. Yes, it looked good.

Q. It looked good?

A. Yes, it looked good that morning.

Redirect examination.

Mr. HUTTON.—Q. Where did you say the anchor was at the time you made the line fast to it?

A. It was on top of the barge.

(Testimony of Joe Silva.)

Q. Was there anything on top of it?

A. No, nothing on top of it.

Q. Was the line clear?

A. Yes, the line was clear.

Q. How high was this house that was on the barge; was it a big house, or a small house?

A. A pretty big house.

Q. How long was the house? Was it as long as the barge?

A. I don't know, but about 30 or 40 feet, or something like that.

Q. It was not as long as the barge, then?

A. No. There was a place on front to put some wagons; there was a place astern to sleep.

Recross-examination.

Mr. BELL.—Q. You didn't hear anybody shout to you or call to you before you dropped the anchor?

A. No, no.

Q. Where were you just before you dropped the anchor? A. I was aboard the barge.

Q. What part of the barge? A. The front.

Q. Were you looking at the launch?

A. Yes, sir.

Q. You didn't hear anybody shout? A. No.

Q. The wind was making a big noise, wasn't it?

A. The wind was pretty strong.

Q. And the sea was also making a big noise—it washing? A. Yes.

Q. Why did you drop the anchor?

A. To try and save the barge.

(Testimony of Joe Silva.)

The COURT.—It was the most harmless thing he could have done at the time, I guess.

Mr. BELL.—That is all.

[**Testimony of Henry C. Peterson, for Libelant.**]

HENRY C. PETERSON, called for the libelant, sworn. [53]

Mr. HUTTON.—Q. What is your occupation?

A. Launchman, launch owner.

Q. Towboating? A. Towboating.

Q. How long have you been in that business?

A. I have been for about 29 years.

Q. Around San Francisco?

A. I have been around San Francisco 52 years.

Q. Did you ever tow over to San Rafael?

A. I have, yes.

Q. You towed barges over there? A. Yes.

Q. How long ago?

A. I have not towed a barge over there myself for a number of years, but I am sending them over there right along off and on.

Q. How many towboats do you control now?

A. 14.

Q. You are familiar with the waters up and around San Rafael, are you not? A. Pretty well.

Q. Where is the nearest point? Can you mark it on that map? A. Right in here.

Q. Just put a cross there. Where is the mouth of San Rafael Creek? A. Right in here.

Q. Just put a mark there. With respect to this dotted portion of the map here, what is that?

A. That is shoal.



(Testimony of Henry C. Peterson.)

Q. How much water is there there?

A. At a very high tide there is about six feet; at low tide about  $4\frac{1}{2}$  feet.

Q. What effect does shoal water have on the sea when there is a wind blowing?

A. It is just like boiling water.

Q. It makes it rough?      A. Very rough, yes, sir.

Q. With a southeast wind what effect does it have on that locality over there?

A. It is a very nasty place to get into, it is very rough.

Q. Take it from the month of November on up to, say February or March of the next year, what kind of weather can you generally [54] figure on getting around San Francisco Bay?

A. I generally figure that from about the middle of November to the middle of January you generally get northeast winds; every once in a while a southeaster between it.

Q. Are you likely to have storms, or not?

A. Yes; you cannot depend on the weather for one minute at this time of the year, from November to April.

Q. Is the weather over on the seawall in San Francisco any indication of what it is likely to be over in San Rafael?

A. Not always. It is according to what weather you start out with, whether it is a northwesterly or a southwesterly or a southeasterly or a northeasterly.

Q. Does a southeast wind have a full sweep in there toward San Rafael?

(Testimony of Henry C. Peterson.)

A. Yes, you have the whole bay in there.

Q. What Bay? A. San Francisco Bay.

Q. Any obstruction there, or is there an unobstructed passage, that is, of the wind, down into those shores?

A. There is no obstruction at all; it has a clean sweep right in there.

Q. Does a southeast wind make it very rough in there? A. Very, very rough.

Q. McNear's Point is beyond San Rafael, is it not?

A. It is beyond San Rafael, yes.

Q. Do you know this barge of the Halvorsen Transportation Company that the last witness testified to? A. I have seen her.

Q. Was she a large barge, or a small barge?

A. She is quite a large barge; I don't know just how large she is.

Q. What effect, if any, would the wind have upon a house that was located on such a barge, would it make it harder to tow, or otherwise?

A. Why, certainly, the higher she is out of the water the harder she is to tow when the wind is strong; the wind has more effect on her. [55]

Q. With a southeast wind, is there more sea, or is there likely to be more sea over around the San Rafael shores than there would be about the seawall?

A. Oh, yes.

Q. The seawall is practically protected from the southeast wind? A. By the hills; yes, sir.

Q. Where would you first begin to get the effect of a southeast wind?

(Testimony of Henry C. Peterson.)

A. My experience in going up that part of the bay is, the further up you go the more effective the wind is. Going up toward San Rafael, with a southeast wind blowing, or a southwest wind blowing, when you get up toward Angel Island, or up in that direction, you will find the wind increases.

Q. The further you go up the worse the wind would be, or the worse effect the wind would have on the sea? A. That is it, yes, sir.

Q. Do you think a 40 horse-power towboat would be sufficiently strong to tow that Halversen barge during the month of December?

Mr. BELL.—That is objected to as incompetent. This witness has only seen the barge; it does not appear that he has seen the boat; it is not asked him whether he is able to tow on a particular day under those conditions, but it takes him over a period of months.

Mr. HUTTON.—But in a city like San Francisco, where it is generally known that at certain times of the year you are almost certain to get storms at any time, it appears that a storm did come at this time, and they had one the night before, a barge owner is supposed to have a towboat sufficient to meet all requirements. If this was in the summer, and an unusual wind sprung up, it might be different.

Mr. BELL.—I submit that that testimony is too remote. The question here is as to whether that man exercised proper judgment on that day, not within two or three months either side of that [56] time. The same argument Mr. Hutton uses could

(Testimony of Henry C. Peterson.)

be used about ships going to sea; there could not be any such thing as the perils of the sea if a man could possibly foresee everything that arises.

Mr. HUTTON.—A man has no right to leave port when the weather indications are bad.

The COURT.—The objections are overruled.

Mr. HUTTON.—Q. I will ask you, do you think a 40 horse-power gasoline towboat would be sufficiently strong to handle the Halvorsen barge?

A. Why, yes.

Q. Under all circumstances?

A. Not all circumstances, no, sir.

Q. Would it, when a southeasterly was blowing over there at San Rafael Point or San Rafael Flats?

A. You cannot tell when you leave here the conditions over there, at times.

Q. I am not asking you about the conditions; I am asking you whether it would be sufficient to tow that barge over there to San Rafael Flats in a southeasterly storm? A. Not on the flats, no.

Q. Is San Rafael Creek a difficult place to get into, or not?

A. You have to get high water to get in there, on account of the shallow water.

Q. Is it wide or narrow?

A. Narrow, very narrow.

Q. In a storm, is it very difficult to get into?

A. Yes, it is.

Q. Do you require more than ordinary power, or less power? I say, does it require more power to get

(Testimony of Henry C. Peterson.)

into that creek when there is a storm, than it would in fine weather?

A. It is according to the man you have on the boat, and whether he knows how to handle the boat in going in there. [57]

Q. Does the southeast storm blow from the San Rafael Creek over to the vicinity of McNear's Point?

A. Yes, it blows right in there.

Q. The fact that this particular boat went by San Rafael Creek and landed at McNear's Point, is that any indication that she drifted, or that the boat had not power enough to hold her?

Mr. BELL.—That is objected to. This witness cannot testify to what was the cause of that boat going by San Rafael Creek, if she did go by there. The other witness was here and he answered as to the cause, as he saw it at the time.

The COURT.—The objection is sustained.

Mr. HUTTON.—Q. At any rate, the wind does blow past San Rafael Creek, in the direction of McNear's Point? A. Yes, sir.

Q. Is McNear's Point farther away from San Francisco than San Rafael?

A. McNear's Point is farther.

Q. How much farther?

A. I guess about three or four miles, speaking off-hand.

Cross-examination.

Mr. LILLICK.—Q. Before going into the towboat business, you had gone to sea, had you not?



(Testimony of Henry C. Peterson.)

A. I was born and raised close to San Francisco Bay.

Q. And you have never gone to sea?

A. I have gone to sea, yes, sir.

Q. Speaking from your knowledge of your experience at sea, what is considered a gale, how many knots an hour?

A. It generally runs up from 40 to 80 miles an hour.

Q. And in the answers you were making to Mr. Hutton's questions about a Southeaster, you were using "Southeaster" as a term to express a gale, were you not? A. Yes, sir.

Q. You have personally towed boats over to San Rafael, haven't you?

A. Yes; quite a while ago; I send men over there now. [58]

Q. You would have no hesitancy in sending out a barge similar to this of the Halvorsen Transportation Company with one of your launches, a 40 horsepower launch, when the wind was blowing from 20 to 25 knots an hour here on this side, would you?

A. No.

Mr. BELL.—You don't suspend your towing business on the bay, do you, between November and January?

A. No, sir; not at any time in the year.

Q. It is a question of judgment, isn't it, as to whether a man should start out, or not?

A. It is a question of judgment, yes.

Q. Do you leave that to your men?



(Testimony of Henry C. Peterson.)

A. Not always, no, sir.

Q. Sometimes you do?      A. Sometimes I do.

The COURT.—Q. If his judgment fails, who loses?

A. I am the loser.

Mr. BELL.—Q. How do you mean that you lose?

A. Well, it has always been customary that if you don't deliver the goods it is up to you.

Q. That is, when you are carrying the goods on your own boat?

A. From what I understand and have understood for years, when you put a tow-line on a barge, no matter who it is, it means it is up to you, it is your judgment to know whether to put that line on there or not. That is the way I have always taken it.

The COURT.—That sounds pretty reasonable to me, too. You don't think the shipper ought to be responsible for your lack of judgment, do you?

A. No, I don't think so.

Q. Nor do I.

A. That being my business, I ought to know; if I don't, I have to pay.

Mr. BELL.—Q. If a launch took a barge from San Francisco to San Rafeal, and got there to go in the creek, and found the sea was running pretty high, what would be the circumstances of getting into the creek?

A. It is a very hard place to get into when it blows from the southeast; it is a hard place to get into, it [59] is very rough there.

Q. It would be very apt, wouldn't it, if the launch

(Testimony of Henry C. Peterson.)

got in the creek, the wind would be very apt to throw the barge on the rocks at the entrance—on the lee shore?     A. Yes, it is liable to.

Mr. LILLICK.—Q. Have you ever lost any goods yourself, from any barges which you have towed?

Mr. HUTTON.—I don't think that is material, your Honor; I object to it as immaterial.

The COURT.—Objection overruled.

A. Yes, sir.

Mr. LILLICK.—Q. When you were speaking of this custom with reference to getting a line on a boat, did you have in mind more particularly the custom with reference to a large tugboat moving a vessel from slip to slip, where the responsibility is put upon the pilot of the tugboat, instead of upon the master of the ship that was being towed?     A. Yes, sir.

Q. That is what you had in mind when you made that reply to the Court?     A. Yes, sir.

Q. In speaking of that custom, you would not say that it was a custom in San Francisco Bay here, if while you had a barge in tow of one of your launches the barge struck a pile, or any submerged object that could not be seen, that you would be responsible for that, because you had put your line on it?     A. No.

Mr. HUTTON.—Q. Is there any other way of getting into San Rafael Creek, except by going right to the mouth of it?

A. Yes, you can go on either side of the island, the Marin islands, there.

Q. How is the weather between the middle of January and the early part of November, as a rule?

(Testimony of Henry C. Peterson.)

A. Well, you get rough weather very often; you cannot depend on the weather a minute; it is rough.

Q. How is it over in that vicinity, over around San Rafael Creek? [60] Are you likely to get worse weather between the first of November and the middle of January than you are at other periods?

A. No, sir.

Q. Isn't it rougher, as a rule, in winter, than it is in summer?

A. Why, yes, but the wind blows in a different direction in the summer, you have your trade winds, the northwest winds, that blow off-shore; the south-east and northeast winds blow up and down the bay, and it has a great sweep, it has no obstruction. You get the distances up and down the bay which you have not across the bay, it is only two or three miles across, although when you do get on the other side of the bay in the summer-time,—around by Berkeley and Oakland—you will see it quite rough there, and on this side you will *be* it perfectly smooth.

Q. You don't get any southeast or southwest storms in summer, do you?

A. No. Once in a great while you do. I have seen a good southeaster in May.

Q. When do they usually commence?

A. They commence all the way from the middle of October. You are liable to get them at any time from October on up to the middle of April. Then there are at times—which are very seldom—you will get a southeaster in the summer, I have seen them in the summer to blow very hard.

(Testimony of Henry C. Peterson.)

Q. A towboat that is able to handle a barge in the summer months, will she be equally as well able to handle it in winter, over on that trip?

A. It is much harder to handle a boat over there in the winter-time than in the summer-time, because the direction of the wind is different in the winter than it is in the summer; you have a lee over there in the summer-time.

The COURT.—We will meet at two o'clock.

(A recess was here taken until two P. M.) [61]

#### AFTERNOON SESSION.

[Testimony of V. J. B. Cheda, for Libelant.]

V. J. B. CHEDA, called for the libelant, sworn.

Mr. HUTTON.—Q. You are the libelant in this case, are you not? A. I am.

Q. You are of the firm of Cheda & Company, over in San Rafael? A. I am secretary and manager.

Q. Do you remember during the month of December, 1913, a shipment of wheat going from San Francisco to your firm in San Rafael? A. I do.

Q. What means of transportation was there for that wheat?

A. It was delivered to the Halvorsen Transportation Company, known as that at that time.

Q. How much wheat was there?

A. Three hundred sacks.

Q. Did you ever receive the wheat? A. No.

Q. Did you ever see the wheat after it left San Francisco?

A. I saw approximately 130 or 135 sacks of it in

(Testimony of V. J. B. Cheda.)

a damaged condition at the warehouse of the Halversen Transportation Company.

Q. Do you know what became of that wheat?

A. Do I know personally? It was sold.

Q. Do you know Mr. O'Brien? A. Yes.

Q. Who was Mr. O'Brien?

A. I don't know what capacity he was in, but he was the manager of that end of the line, manager and shipping clerk and receiving clerk.

Q. Of what company?

A. Of the Halversen Transportation Company.

Q. Did you ever have a conversation with him about the wheat subsequently to the time you saw it in the warehouse?

A. I went to the warehouse and looked at it, and I then told him—

Mr. BELL.—I would like to object to any conversation, your Honor, as not binding upon the owners of the launch. [62]

Mr. HUTTON.—That may be, but it is binding upon the owners of the barge.

Mr. BELL.—We were not the owners of the barge. I am objecting on my own account.

A. The wheat was in a damaged condition, and I gave him the benefit of my experience, and told him that if I were he I would rip the sacks open and put the wheat to the air as quickly as possible. I thought that would be the best way to make the best use of it.

Q. Did you talk to him about it afterwards?

A. I asked him about the proceeds of it, who was

(Testimony of V. J. B. Cheda.)

to get it.

Q. What did he do with the wheat?

A. He sold it.

Q. Do you know what he did with the proceeds?

A. I do not.

Q. Did he ever tell you what he did with them?

A. Yes, he told me he gave them to the firm.

Q. What firm?

A. The Halvorsen Transportation Company.

Q. When did he tell you that?

A. Inside of two weeks from the accident.

Q. Was that a part of the wheat of Cheda & Company?

A. That was Cheda & Company's wheat.

Q. On the morning that that barge went ashore, were you down in the vicinity of the harbor or the creek of San Rafael?

A. I was there about ten o'clock that day.

Q. How was the weather at that time?

A. Very rough.

Q. How had it been the night before?

A. About the same condition, rough.

Q. How long did it continue to be rough?

A. To the best of my recollection it kind of calmed off in the afternoon, if I remember right.

The COURT.—Of the day of the wreck?

A. In the afternoon of the day of the wreck.

Q. Had it been rough during all the night and morning of that [63] day?

A. To the best of my knowledge it was a very rough, raw night.



(Testimony of V. J. B. Cheda.)

Mr. HUTTON.—Q. When did the storm commence?     A. It was the day before.

Q. About what time?

A. I could not say that, that is too long ago. What impresses it on my mind is that I was rather anxious about the shipment, and I went down and inquired if the boat had ventured out in that gale, and he said, yes, it had left San Francisco, and he said he saw it pass out on the flats. At that time we did not know it was wrecked.

Q. How was it then?

A. It was blowing a gale.

Q. You say this was about ten o'clock?

A. About half-past ten in the morning.

Q. Had it been blowing the same way during the whole of the preceding night?

A. Well, I don't know anything about the velocity; do you want my own opinion on it?

Q. Yes.

A. I think it was blowing more at night than in the daytime.

The COURT.—Was it storming in the morning?

A. It was storming in the morning; it was a stormy week.

Mr. HUTTON.—Q. I show you what purports to be an assignment to you of these respective claims. Are those the signatures of the parties they purport to be the signatures of?

A. They are the signatures of every individual who has his name on this assignment.

(Testimony of V. J. B. Cheda.)

Mr. HUTTON.—I offer that in evidence.

(The document was here marked “Libelant’s Exhibit 1.”)

Q. Did your firm, or anyone for it, ever receive any of the proceeds of that wheat? A. They did not.

Q. Did you ever go down to where the barge went ashore? A. No, I did not. [64]

Cross-examination.

Mr. LILLICK.—Q. Did you make any demand upon Mr. O’Brien to give you the proceeds of the sale that he made?

A. I believe I told Mr. O’Brien, knowing him so well, that I thought I was only giving him advice, and that he ought to bring that money in such shape as to determine afterwards as to how it should go.

Q. And it was left in that situation?

A. I don’t know how it was left, but that was my advice to Mr. O’Brien.

Q. And probably that was what was done; so far as you know, that was what was done?

A. No, I don’t know that.

Q. But you did not make any demand on him other than that? A. I have since asked him for it.

Q. That was before the commencement of the suit?

A. Yes, and since.

Q. But that demand was a demand for the total loss that you had made, was it not?

A. Well, I felt I was entitled to what they did save out of the wreck, anyway; I did not think they should put injury on injury.

Q. That is not an answer to my question. I only

(Testimony of V. J. B. Cheda.)

asked you if you had made a demand for the total amount prior to the commencement of the suit?

A. Oh, I believe I have, through different channels.

Q. Since the accident, the Halversen Transportation Company sold their business to someone who is now doing that expressing for you, did it not?

A. Not that I know of.

Q. Is it not a fact that someone else is now doing the business that was formerly done for you by the Halversen Transportation Company?

A. Mr. Stangland, yes.

Q. And didn't Mr. Stangland make a settlement with you of a part of the loss that you sustained by reason of this accident, as a consideration for his obtaining your business? [65]

Mr. HUTTON.—I don't think that is material, your Honor. As long as he did not pay for the Halversen Transportation Company, he may have paid it with the understanding that he was to get their business.

A. Well, I can answer it; it won't hurt anybody; he made that agreement, but it was broken.

Mr. LILLICK.—Q. It was broken, you say?

A. Yes; we are back in the same position we always were in.

The COURT.—Q. You have not been paid?

A. We have not been paid, no.

Mr. LILLICK.—Q. What was the arrangement?

A. The agreement that was entered into?

Q. Yes.

(Testimony of V. J. B. Cheda.)

A. Stangland & O'Brien agreed with the merchants who sustained the loss in that wreck that if we would give them all our business of freighting and expressing from San Francisco to San Rafael, where everything was equal, that they would, in turn, give us \$150 a month until such time as two-thirds of that indebtedness was paid.

Q. Nothing has been done about that?

A. They made one payment.

Q. Was demand made on them for a payment that was due the following month?

A. Yes, and for the following, and after that, and that, and that.

Q. They didn't pay any of the rest of it?

A. They have not been paying, no.

Q. Have you any independent recollection of the condition of the weather between the nightfall of December 31st and the morning of the next day?

A. Yes, mine is an independent one. I knew that 300 sacks of wheat were out, and it worried me some.

Q. Do you remember what the condition of the weather was that night?

A. It was a very bad night.

Q. And as bad as it was on the afternoon of the preceding day? [66]

A. Well, now you have got me.

Q. Do you know whether the Weather Department had an office in San Rafael?

A. No, I don't believe they have. The High School has—the children—but I don't know whether it is accurate.

(Testimony of V. J. B. Cheda.)

Q. You don't know whether there is a branch of the Weather Service Bureau there?

A. No. Mt. Tamalpais is the nearest.

Mr. HUTTON.—Q. Is there telephonic communication between San Rafael and San Francisco?

A. There is, yes.

Q. State whether or not you know from anything Mr. O'Brien ever told you he communicated with this side with reference to the weather.

A. Mr. O'Brien told me that he telephoned to the captain of the barge not to come as the weather was too rough, and he also telephoned to Mr. Coddling after the barge had left and asked him to send the "Golden Eagle" launch over to assist the "Seven Bells," as the wind was too strong and she could not handle the barge on the San Rafael flats.

Mr. BELL.—Your Honor, I would like to object to that testimony as not binding upon the launch.

Mr. HUTTON.—Q. Who is Mr. Coddling?

A. From what I understand—this is only hearsay—he was one of the incorporators of the Halversen Transportation Company.

Q. Do you know whether Mr. Coddling had an office over on this side, or not?

A. I don't know that.

Q. How long had Mr. O'Brien been in communication with the Halversen Transportation Company in San Rafael?

A. During its entire existence.

Mr. LILLICK.—Q. You said Mr. O'Brien told

(Testimony of V. J. B. Cheda.)

you he telephoned to the captain of the barge—did you mean that?

A. The captain of the boat, Captain Gilmour.

The COURT.—Q. You mean the captain of the towboat? A. Yes, sir. [67]

Mr. BELL.—Q. Where do you reside, Mr. Cheda?

A. San Rafael.

Q. Where were you on the night prior to this wreck? A. Every place.

The COURT.—Q. Were you in San Rafael?

A. I was in San Rafael, yes, sir.

Mr. BELL.—Q. Being in San Rafael, you would not know what the condition of the wind was down at the mouth of San Rafael Creek, would you?

A. Well, I cannot say that I do—do you know the distance?

Q. Well, you know where it is?

A. Yes, it is about a mile and a half from my home.

Q. Is it not a fact that San Rafael is protected there so that even if there is a wind you would not know it? A. Not so you could see it.

Q. And you are sure now, are you, that there was a high wind the night *prior the* time the barge went ashore? A. There was.

Q. What time did that wind begin?

A. Well, I would not venture to state the time as to that.

Q. Do *you whether* that wind was blowing at 11 o'clock the night before? A. Yes, sir; I do.

Q. Do you know if it was blowing later than that?

A. No, I could not tell you that it was blowing con-



(Testimony of V. J. B. Cheda.)

tinually later than that. I retired for the night.

Q.—Do you know if there was any lull after that time? A. I do not.

Q. Do you know if the wind was blowing at 6 o'clock that morning? A. I do not.

Q. Or at 8 o'clock? A. Yes, I do.

Q. It was blowing at 8 o'clock, was it?

A. There was a gale on at 8 o'clock. [68]

Q. When did you first know of it in the morning?

A. It is my habit when I get down to my business at 7:30 to find out what goods are in at the different stations; that was one of my habits, and that morning I telephoned to O'Brien to see if the wheat had arrived and then I discussed it with him.

Q. Where is your office?

A. It is in San Rafael.

Q. How was the wind at 8 o'clock with reference to what it had been the night before at 11?

A. Well, I am no expert on that.

Q. You don't recollect what the condition of the wind was in the morning?

A. Not in comparison, no.

Q. Did you make the contract with the Halversen people for the carriage of your goods?

A. I don't believe so.

Q. Who made it, if you know?

A. I don't believe anybody did.

Q. Had you had goods carried by them before?

A. It was carried by the firm ahead of them, I believe they bought out a man named Saxter.

Q. Had you had any goods carried by the Halver-

(Testimony of V. J. B. Cheda.)

sen people prior to this?      A. Sure.

Q. On the same barge?      A. On the same barge.

Q. Towed by the same towboat?      A. Yes, sir.

Q. You knew that this towboat was towing that barge back and forth, did you?      A. I did.

Q. That morning when you went down to your office you were worried about this shipment of wheat?

A. I was. I telephoned first and then I walked to the yard, which is about  $\frac{1}{2}$  a mile below.

Q. That was on account of the heavy wind that was blowing?

A. Well, I know I generally go in my automobile or in my rig and I walked that morning because the weather was too raw. [69]

Q. You were worried because it was such an extraordinarily hard storm?

A. I didn't care about the storm, it was the wheat I had in mind.

Q. You were worried about the wheat on account of the big storm?      A. That was it.

Q. In what direction was the wind blowing that morning?      A. It was blowing from the south.

Q. Was it directly from the south?

A. I don't know.

Q. That was at the town of San Rafael that it was from the south?

A. Yes; I don't know whether it was southeast or southwest.

Q. You don't know what it was down at the mouth of the creek?      A. I do not.

(Testimony of V. J. B. Cheda.)

Q. Who does your towing now?

Mr. HUTTON.—I don't think that is material, your Honor. He doesn't have any towing done anywhere.

Mr. BELL.—Q. Do you ship any goods across the bay? A. Yes.

Q. How are they shipped?

A. Standland and the San Rafael & San Anselmo Express Company.

Q. On barges?

A. On a boat; I don't know what you would call it, whether it is a steamboat.

Q. Not on barges? A. Not a barge, no,

Redirect Examination.

Mr. HUTTON.—Q. I think you said you discussed something with Mr. O'Brien when you rung him up that morning.

Mr. BELL.—I object to this testimony as not being binding upon the launch.

A. About the weather and about the boat, as to whether she left San Francisco.

Mr. HUTTON.—Q. What was the conversation?

A. I told him, "I hope the boat has not left the other side," and he says, "I think she has." [70]

Q. Anything else said that you remember?

A. No, not that I can remember.

Q. Was that storm any worse storm than usual over there at that time of the year?

A. Yes, that was what we call a southeaster.

Q. Was it worse than any other southeaster?

A. It was a pretty brisk one; in fact, I don't know

(Testimony of V. J. B. Cheda.)

how to explain it to you but we feel that it was one of our heaviest storms. We only get about two or three of them.

The COURT.—Q. Two or three a year?

A. Just about two or three a year, and that was one of them.

Mr. HUTTON.—Q. Was it any worse than any other storm that you may get in that time of the year? A. No, I don't believe so.

Q. You have seen plenty of other storms at that time of the year of equal violence, haven't you?

A. It is a usual winter storm.

The COURT.—Q. It was no worse than any other storm, that was as bad?

A. That is it, your Honor.

Recross-examination.

Mr. LILLICK.—Q. Do you have your goods shipped under a shipping receipt or a waybill?

A. We have it under a shipping receipt.

Q. Have you a copy of the shipping receipt that was issued to you when this wheat was shipped?

A. I believe so.

Mr. LILLICK.—We ask counsel to produce it.

Mr. HUTTON.—I never saw it.

Mr. LILLICK.—Q. Will you send it to your counsel so that he may turn it into the court?

A. I will. If I have it I will produce it.

Q. Would you know whether or not it was under this form of a shipping receipt? (Handing.) There is some printed matter on the back. [71]

A. I have never read that printed matter. I can

(Testimony of V. J. B. Cheda.)

give you the shipping receipt I think if we have it.

Q. If not will you give us a shipping receipt similar to it?     A. Yes.

Q. Do you know whether or not it was the standard form of waybill or shipping receipt known as the California shipping receipt?

A. I believe it was the California shipping receipt.

Mr. HUTTON.—The receipt itself will be the best evidence of what it contains.

Mr. LILLICK.—I am only asking him that so that if the witness has not the receipt we will have the testimony of the witness that it was the usual California shipping receipt.

Mr. HUTTON.—Q. Have you the shipping receipt?     A. I think so.

Mr. LILLICK.—Q. That particular shipment of wheat was not owned by you on this side of the bay, was it?

A. I bought that wheat on the seawall; now, whether you would say it was owned by me on this side of the bay I don't know.

Q. Who shipped it?     A. Albers Brothers.

Q. You sent over an order and they put it on the express?

A. I gave them the order, they telephoned to the Halversen Transportation Company to call at the seawall and get the consignment.

Q. Would you know in advance then what kind of a shipping receipt you were going to get?     A. No.

Q. You have no control over that?

A. I have not.

(Testimony of V. J. B. Cheda.)

Mr. BELL.—Q. At the time you telephoned O'Brien on the morning that this barge went ashore, at that time you thought the shipment had left the night before from San Francisco, didn't you?

A. I was the habit of the boat to be there the first thing in the morning. [72]

Q. At the time you telephoned you thought it had left the night before? A. I thought it was in.

Q. That would necessitate its having left the night before?

A. I believe they take two or three hours to run, and they run according to the tides.

Mr. LILLICK.—Q. Have you paid Albers for the wheat? A. Yes, sir.

**[Testimony of A. H. Gilmore, for Libelant.]**

A. H. GILMORE, called for the libelant, sworn.

Mr. HUTTON.—Q. What became of the engine that was in the "Seven Bells" at the time you were towing the Halvorsen barge in the latter end of December, 1913, at the time the barge went ashore?

A. The Standard Engine people took it out.

**Cross-examination.**

Mr. BELL.—Q. Had the "Seven Bells" been attached at the time that they took that out, had it been libeled? A. No.

Mr. HUTTON.—It had been libeled but it had not been seized.

Mr. BELL.—At the time this engine was taken out a libel had been filed but the vessel had not been seized?

Mr. HUTTON.—The record shows that they went



(Testimony of A. H. Gilmore.)

over there and the marshal told him the boat had gone away and would not be back until a couple of days and when she came back they took the engine out.

Mr. BELL.—Q. You had purchased the engine from the Standard Gas people on a conditional sale?

A. Yes, sir.

Q. The price had not been paid? A. No.

Q. And that is why they took the engine out?

A. Yes. [73]

Mr. BELL.—Q. You will admit, Mr. Hutton, won't you, that after the libel was brought we came into court here and agreed that it was not necessary to reattach the engine, that the engine was to be considered as in court here subject to this decision.

Mr. HUTTON.—You delivered it up on the order of the Court and we went over and took it at the Standard Gas engine place?

Mr. BELL.—Yes. I just wished it understood that there was no attempt on our part to avoid this suit. The engine had been taken out before the vessel was seized and we could have put the other side to the trouble of commencing a new suit against the engine, but we were willing to let it come in in this proceeding.

Mr. HUTTON.—A motion was made here on an affidavit showing that the marshal had gone over to the gas engine works inquiring for the boat—

The COURT.—Well, what is the relevancy of this discussion?

Mr. HUTTON.—It is immaterial, I think.

(Testimony of A. H. Gilmore.)

Mr. BELL.—I think it is, too. I didn't know what the relevancy of this testimony was.

Mr. HUTTON.—If your Honor please, Mr. O'Brien promised to be here this morning. He lives in San Rafael. I fully expected him to be here. At a little after 12, or a little before 12, we communicated with him again and he promised to be here at 2 o'clock; he is not here. The pleadings admit receiving the goods. It is a matter of defense more than anything. I would like the opportunity of producing Mr. O'Brien.

The COURT.—If it be necessary. The best way to get a witness here is to subpoena him.

Mr. HUTTON.—I understand that, but sometimes we take a man's word.

The COURT.—I know it, but when you take his word you take [74] chances. The Court can enforce its orders but it cannot enforce gentlemanly agreements.

Mr. BELL.—We have no objection, your Honor, to a continuance. We would like to take the matter up within the next few days though, if we can.

The COURT.—Is this the last of your case?

Mr. HUTTON.—That is the last witness.

Mr. BELL.—We are in the same situation with reference to one witness. We have always been ready to try the case but it has gone over continually either at the request of Mr. Hutton or Mr. Lillick.

Mr. HUTTON.—Never at my request. Mr. Lillick was engaged in the trial of another case. That is the reason it went over.

Mr. BELL.—We went to considerable trouble to

(Testimony of A. H. Gilmore.)

have these men here but we were unable to make it.

The COURT.—Where are they?

Mr. BELL.—One is in Redwood City.

The COURT.—The process of this court runs that far.

Mr. BELL.—Yes, your Honor, we are in the same difficulty as Mr. Hutton finds himself.

Mr. LILLICK.—I think if your Honor could give us Thursday afternoon we could finish this case. I don't want to offer any objection to a continuance.

The COURT.—I think we ought to proceed as far as we can to-day.

Mr. BELL.—Yes, we can do that.

**[Testimony of A. H. Gilmour, for Defendant.]**

A. H. GILMOUR, recalled for the defendant.

Mr. LILLICK.—Q. Mr. Gilmour, do you know your brother's signature, G. M. Gilmour? I ask you whether or not that is his [75] signature, appearing on that document?

A. It looks like it.

Q. That is his signature, isn't it? A. Yes.

Mr. LILLICK.—This is the agreement under which the Halversen Transportation Company and the Gilmores were working with reference to the hiring of the launch "Seven Bells"?

Mr. HUTTON.—I don't think it is material as to us. We make that objection.

Mr. LILLICK.—It certainly will be material in fixing the liability, if there be any.

Mr. HUTTON.—The shipper of freight cannot know what arrangements they are making in advance or what arrangements are made with other

(Testimony of A. H. Gilmore.)

people; he is entitled to a delivery of his goods.

The COURT.—The document will be admitted. I don't know what the legal effect will be.

Mr. LILLICK.—The effect will be to fix the liability, if there be any liability at all.

(The document was here marked Respondent Halvorsen Transportation Company's Exhibit "A,")

Q. You were running the launch "Seven Bells" upon the freighting that was being done here with that barge? A. Yes, sir.

Q. In the course of the shipment of goods on board the barge what was the custom with reference to signing shipping receipts or waybills when goods were offered to the barge?

A. They had an office down at the wharf and a receiving clerk there. I had nothing to do with receiving.

Q. You do know however that they gave shipping receipts and bills of lading? A. Yes, sir.

Q. I will ask you whether *this one* of the waybills or shipping [76] receipts that was used?

A. Yes, that, and more of the other ones.

Mr. LILLICK.—I offer this in evidence so that if there be any loss of that other shipping receipt we will have a copy of a form of a bill of lading.

Mr. HUTTON.—I object to it as immaterial and not bringing on the consignee.

The COURT.—The objection is overruled.

(The document was marked Respondent's Exhibit "B.")

(Testimony of A. H. Gilmore.)

Cross-examination.

Mr. HUTTON.—Q. What part of the business did you carry on, Mr. Gilmour?

A. I was captain of the boat.

Q. These papers would be issued from the office, would they?      A. Yes, sir.

Q. You had nothing to do with that?

A. No, sir, I had nothing to do with the papers.

Q. What office was it that issued them?

A. The Halversen Transportation Company's office.

Q. You simply furnished that boat—that is all that you did?

A. Yes, and the help rode on the barge.

Q. You were on the boat most of the time?

A. Yes, sir.

Q. This cargo that you carried over to San Rafael, that came from different merchants in San Francisco, didn't it?      A. Yes, sir.

Q. That is, anyone that wanted to make a shipment would send it down there, it would go on the boat and be taken to San Rafael?      A. Yes, sir.

Q. And the Halversen Transportation Company carried on a general transfer business from San Francisco to San Rafael at that time?

A. Yes, sir.

Q. Taking anything that came along?

A. Yes, sir.

Q. Did they advertise?

A. I believe they did. [77]

Q. That is, advertised that they carried cargo?

A. Yes, sir.

[Testimony of G. M. Gilmore, for Respondent.]

G. M. GILMORE called for the respondent, sworn.

M. CHAPMAN.—Q. Mr. Gilmore, you were one of the owners or one of the members of the “Seven Bells” at the time that this accident occurred which is the subject of this suit here? A. Yes, sir.

Q. When did you first commence to carry or tow a barge over to San Rafael for the Halvorsen Transportation Company? A. July 28, 1913.

Q. How often did you make a trip?

A. Every night except Sundays and holidays.

Q. What was the size of the “Seven Bells”?

A. 46 by 15 by 4½ draught.

Q. 46 feet long? A. Yes, sir.

Q. 15 feet beam? A. Yes, sir.

Q. And what was here depth? A. 4½.

Q. What kind of an engine?

A. 40 to 50 Standard.

Q. 40 to 50 horse-power?

A. Yes, the Standard Gas Engine Company guaranteed us 50 horse-power.

Q. At the time of the accident how old was that engine? A. A brand new engine.

Q. How long does it take you ordinarily to make the run from the Jackson Street wharf to San Rafael?

A. The average of the time we ran was 3 hours and 25 minutes.

Q. Is that dependent at all on the condition of the tide? A. The tide and weather.



(Testimony of G. M. Gilmore.)

Q. On the night in question what time did you leave your wharf?

A. We left Jackson Street wharf at about 7 o'clock.

Q. Who was on board of the "Seven Bells"?  
[78]

A. The captain and myself.

Q. That was the 30th of December?

A. The 30th of December.

Q. About 7 o'clock? A. Yes, sir.

Q. You and A. H. Gilmore were on the "Seven Bells"? A. Yes, sir.

Q. What were your duties?

A. To handle the lines and steer the boat.

Q. What was A. H. Gilmore's duties?

A. He was the captain of the boat.

Q. Who operated the engine?

A. Either of us; we *both* a license to operate.

Q. Who was on the barge?

A. Nobody necessarily; sometimes we had one man and sometimes two.

Q. Silva was on the barge at the time of the accident, was he? A. Yes, sir.

Q. What was the size of the barge?

A. 28 by 68.

Q. 28 feet long by 68 feet beam? A. Yes, sir.

Q. What was the draught of the barge?

A. From 12 to 16 inches.

Q. You left the Jackson Street Wharf about 7 o'clock that night, did you? A. Yes, sir.

Q. Where did you go?

A. We didn't know whether we would make San

(Testimony of G. M. Gilmore.)

Rafael, or not, but we figured on going along the waterfront to get a good idea how the weather was and we went a little beyond the seawall and being dark and it looked like a bad night, we pulled in to the seawall and tied up.

Q. What time did you get in to the seawall?

A. I could not say exactly, but I think about a quarter past 10. We had gone out a little ways and tied up to the seawall.

Q. Were you on deck during the night of the 30th?

A. Yes, sir. [79]

Q. What was the condition of the weather?

A. It looked more or less stormy.

Q. What was the condition of the weather on the morning of the 31st of December?

A. It looked like a storm had just blown out.

Q. Was there any sun shining?

A. No, but it brightened up.

Q. Was it raining? A. Just a drizzle.

Q. What was the condition of the sea?

A. The sea was smooth, with a slight heave running in from the south.

Q. What time did you leave the seawall for San Rafael? A. About 8:15.

Q. You are familiar with this chart, are you not?

A. Yes, sir.

Q. I will ask you to mark on the map here the course that you took from the seawall.

A. (Witness does as directed.)

Q. This line that you have drawn describes the course you took on the morning of December 31st,

(Testimony of G. M. Gilmore.)

and up to the time the barge was lost on December 31st?     A. Yes, sir.

Q. In other words this is the entire course?

A. The entire course,

Q. After you left the seawall, what was the condition of the wind and sea, from the time you left the seawall until you came to Pt. Blunt, which is the southeasterly point of Angel Island?

A. The weather was quite moderate.

Q. I will ask you, in these months that you have been running across the bay, what is the weather that you experience on that part of the coast compared with what it is in the upper bay?

A. In the summer-time usually across the channel it is all right.

Q. In the winter-time, what is the condition?

A. Well, more or less the same except sometimes in the winter we experience a norther coming down.

Q. What was the condition of the wind? From what quarter was the wind blowing when you left the seawall that morning, the morning [80] of the 31st of December?     A. It seemed to be south.

Q. What has been your experience in making this trip on a southerly wind? Where have you experienced the greatest wind?

A. Right at Southampton Shoal.

Q. That is marked on the map?     A. Yes.

Q. On the day in question, up to the time you reached Southampton Shoal, what was the condition of the wind and sea?     A. It was still moderate.

(Testimony of G. M. Gilmore.)

Q. In your opinion, did it justify you in continuing your trip?

A. Yes, sir. We had shelter in here, but we decided it was not necessary.

Q. At that time there was no reason for your turning back or seeking shelter? A. No, sir.

Q. You could have put into Raccoon Straits?

A. Yes, sir.

Q. When you got here you changed your course to the Marin County shore?

A. There was a swell up the bay; that was from the night before; we went inshore to avoid it, which we did.

Q. Where is California City? A. Right here.

Q. When you got off California City, what was the condition of the weather compared with what it was when you left?

A. There was not much difference, only we experienced a little wind coming off the shore, but it seemed to be west of south.

Q. When did you first run into any heavy wind or bad sea?

A. Between California City and Pt. San Quentin.

Q. When you reached San Quentin, what was the condition of the wind and sea?

A. It began to get very squally.

Q. This chart shows a shaded surface. That indicates shoals and flats, does it not? A. Yes, sir.

Q. And the little marks indicate the depth in feet?

A. Yes, sir.

Q. And in the clear, the depth in fathoms?

(Testimony of G. M. Gilmore.)

A. Yes, sir. [81]

Q. After the wind, you say, got heavy and the sea rough off San Quentin Point, was there a shelter which you could make?

A. Not in the close vicinity.

Q. Explain to the Court what this cove or break in the coast is?

A. This is mud in here; that is rocky shore.

Q. Along San Quentin it is all rocky shore?

A. Yes, sir.

Q. And you could not have gotten in there?

A. That is the lee shore; if you went in there, you would get on the rocks, and on the beach.

Q. It would have driven you on to the rocks?

A. Yes, and as we arrived at Point San Quentin the wind hauled still more south—southwest.

Q. You passed San Quentin Point in safety, did you? A. Yes, sir.

Q. After you passed San Quentin Point, what was the depth of water between San Quentin Point and the mouth of San Rafael slough?

A. Just enough water to float in.

Q. Just enough water for the "Seven Bells" to float in, and necessarily the barge? A. Yes, sir.

Q. What is the distance from San Quentin Point to the mouth of San Rafael Slough?

A. About seven-eighths of a mile.

Q. Will you explain to the Court the opening of San Rafael Slough, how wide it is?

A. There was a dredged channel of 100 feet; at this time there was a channel of from 45 to 50 feet.

(Testimony of G. M. Gilmore.)

Q. What was on either side of the channel?

A. There was mud in the channel, but off the channel a distance of 400 feet there was a rocky shore.

Q. On which side?      A. On the northeast side.

Q. On the northeast side and the lee side?

A. That was the lee side at the time we arrived there.

Q. When you reached the mouth of San Rafael Slough, what was [82] the condition of the wind and sea?

A. Very nasty. There is a beacon off there. We came up to the beacon. We saw it would be foolish to be in, we rounded up to the weather.

Q. How much tow-line did you have out when you approached San Rafael Slough?

A. We had 225 feet of line and 15 feet of cable; of this, we had about 190 feet out.

Q. As you approached the slough, did you take in your hawser, your line?

A. We took it in until we had about 50 feet out, and we had it in for about five minutes and let it out again, because it would break if we didn't.

Q. What was the purpose of taking in the line?

A. So the barge would not be to leeward.

Q. And therefore you could not control the barge?

A. We always do that. As soon as we get off the creek we take the barge close in.

Q. You shortened in your tow, so that if you made a turn there would not be that chance of the barge swinging down the river?      A. Yes, sir.



(Testimony of G. M. Gilmore.)

Q. After you did that, was it possible for you to get in the creek?

A. No, sir, we found out afterwards it was impossible.

Q. What kind of freight did you have on?

A. General merchandise; we had everything.

Q. When you reached the mouth of San Rafael Creek under these conditions, what did you then do?

A. We looked for shelter. For a while we thought probably it would blow out. It blew so squally and so hard on short notice we knew it would not last long, and we thought we would haul over to the Marin Islands for shelter.

Q. I will mark that as "Marin Islands." How large are those? A. About four or five acres.

Q. You then thought you would seek shelter behind the Marin Islands? [83] A. Yes, sir.

Q. Did you get behind those islands?

A. We came up exactly to where I marked there, right close to them; we were heading down the bay making that course, we were headed right into the wind, and we would be off this far—

Q. When you say "headed into the wind" you mean—

Mr. HUTTON.—Your Honor, I have not objected to this examination up to date, but counsel is telling the witness right along what to say.

Mr. CHAPMAN.—Q. What do you mean by saying you headed into the wind?

A. We came up from a south wind; as we turned in here the wind came pretty near southwest, the

(Testimony of G. M. Gilmore.)

squall did; we went on before the wind; you cannot get in the creek on a heavy southwest wind, or a little south of southwest, and so we pulled out and went to seek shelter behind Marin Islands; we found we could not pull up to the islands, the wind got too heavy for us, we didn't want to drop anchor over here, over toward Pt. McNear, we found the rocky shore there, and it was not practical to anchor. We wanted a muddy shore.

Q. When you headed up toward Pt. McNear what course were you making? You were headed south, were you?

A. We were heading south and going east.

Q. Were you making leeway at that time?

A. We were making leeway in the direction that line goes (indicating).

Q. If you kept on, could you have cleared McNear's Point?

A. No, sir; we found that came down too close; if we went to deep water there, no telling what would happen to the man on the barge, we could not get him off.

Q. You couldn't get close enough to Marin Islands to get shelter; you could not go to McNear's Point because you would go on to this point first.

A. We were afraid we would. [84]

Q. Where did you go?      A. Back on our course.

Q. Where did you go?

A. Right at this line, here.

Q. At that time, how far were you away from the shore?

(Testimony of G. M. Gilmore.)

A. Five-eighths of a mile, and we had not let go yet.

Q. What was the condition of the weather at that time?     A. Right at its highest.

Q. At what time of day was this?

A. 12:15 o'clock, as near as I remember.

Q. You say you steered for that cove?

A. We were backing up there; the wind was backing us up as we went back again.

Q. The wind drove you in there?     A. Yes, sir.

Q. Do you know what the depth of water was at that time?

A. The boat draws 4½ and we were touching bottom at every swell.

Q. What effect did that have on the steering of the boat?     A. It is hard to navigate.

Q. You mean navigate well. I mean in the condition you were in at that time, when the boat struck bottom on every swell, did your boat have steerage way at that time?

A. It had a little. At one time we lost the steerage, and we had to make a circle off the point to get back again.

Q. The wind was driving you into this cove?

A. Yes, sir.

Q. What did you do with reference to the barge?

A. We pulled her off shore and then let her go and dropped the anchor on the barge.

Q. Describe the formation of the coast?

A. This point is rocky.

Q. You are referring to this point (indicating)?

(Testimony of G. M. Gilmore.)

A. Yes, sir. All the cove is muddy, and it is perfectly safe; you can let anything go in and it would never be damaged. From here on, on the eastern side, it is all rocky and deep water, as the chart shows.

Q. Referring now to the two points of the cove, where were you [85] when you let the barge go?

A. Right in the middle of the boat.

Q. Did you say anything to this man Silva on the barge, with reference to letting the anchor go?

A. No. We saw him on the forward end of the barge and we could not speak to him, it was so boisterous you could not talk; you could make motions to him, but that is about all.

Q. You say you let loose the tow?

A. Let loose the tow.

Q. You let loose?

A. We let loose our tow-line.

Q. What did Silva do?

A. He did the best he could to get the anchor overboard.

Q. What size anchor did the barge have?

A. I judge about a 200-pound anchor. Mr. Halvorsen told me he bought it for a 230-pound anchor, that is what he paid for; I would judge it weighed anyhow 200 pounds.

Q. How much line did you have with that anchor?

A. I should judge from 140 to 160 feet.

Q. Do you know at the time this man Silva let the anchor go, whether all the line was paid out, or not?

A. I could not see exactly; I think it was, because

(Testimony of G. M. Gilmore.)

when we went around the beach with the barge there, the end was made fast and the rest of it was overboard.

Q. The end was made fast on the boat?

A. Yes, sir.

Q. After letting the barge go, what became of the barge?

A. The anchor retarded her so it lifted over on to this edge of the cove, the first of the rocks; it just reached the rocks.

Q. Do you know what depth of water there is at these rocks?

A. At low tide, about  $2\frac{1}{2}$  feet.

A. What was the condition of the tide then?

A. Flood tide; getting toward the top of the tide.

Q. Where did you expect the barge to go?

A. Right in that cove. We were backing up, and *when got* right to leeward he let it go. The man on the barge did the best he could to let the anchor go.  
[86]

Q. I think you testified that in the cove it was all muddy, except that these two points were rocky?

A. Yes, sir.

Q. Referring to the condition of the weather, have you seen storms as heavy as that in your experience in running to San Rafael before that winter?

A. Well, I have not seen such squally weather?

Q. Have you seen such squally weather, or the same weather, when you left San Francisco before?

A. Oh, yes, we have left in worse weather in daylight.



(Testimony of G. M. Gilmore.)

Q. And, as I understand you, the bad weather did not set in until you reached about California Point?

A. California Point.

Q. And you consider, do you, in the exercise of your best judgment, that you did all that you could do to save the barge.

A. I did everything possible. To hang on to the barge here 20 minutes more, we both would have been on the beach. We were backing up at that rate. We backed up to here.

Q. How did Silva come to let that anchor go, do you know?

A. Well, natural instinct would tell him to let it go,

Q. Was it on your signal to let it go?

A. No. He was working at it and I let him go ahead with it.

Q. If your boat had been of more power, could you have held that barge?

A. If we had more power, we would have had more draft and could not navigate.

Q. What effect did the heavy sea have upon the propeller?

A. It does not hurt the propeller any, but when it gets down in the sea she won't steer.

Q. When the boat comes out of the sea, what effect does it have on the propeller?      A. It would stop.

Q. What effect does it have, I say, when it comes out of the sea?

A. No effect whatever. If it stays out of the sea long enough you can navigate again. [87]

Mr. LILLICK.—Q. Mr. Gilmore, do you know



(Testimony of G. M. Gilmore.)

whether they buy anchors by the pound?

A. Yes, sir.

Q. How far away from shore was the barge when the anchor was dropped overboard?

A. When it finally got overboard, I think, it was not over a quarter of a mile; it is pretty close. It took quite a while to get it ready.

Q. You heard Silva testify this morning that the barge was on the rocks before he got the anchor over?

A. I heard him say it was almost on the rocks.

Q. What is your recollection about that?

A. It is pretty hard to tell; I should think it was a short quarter of a mile away.

Cross-examination.

Mr. HUTTON.—Q. Silva would be more likely to know about that than you would, wouldn't he?

A. I don't know; we stayed there until he went up to the doctor.

Q. He was on the barge?

A. Yes, the forward end of the barge.

Q. You were looking out for your boat?

A. We were looking out for everything.

Q. You didn't look out for it very much when you let go.

A. In the best of our judgment we did what was right.

Q. Were you engineer, or what?

A. I was deck hand.

Q. Who was captain?

A. My brother was captain.

Q. How long had you been deck hand?

(Testimony of G. M. Gilmore.)

A. On this boat about three years.

Q. On that particular boat?      A. Yes, sir.

Q. What was your occupation before you went in the gasoline boat business.

A. I was up in the river country on dredgers.

Q. The "Seven Bells" was not three years old at that time, was she?

A. She was a good deal older than that.

Q. When did you first get control of her?

A. We got the boat in [88] February, 1910.

Q. That was your first experience as a boat man, of any character?

A. No, sir, I started on the bay in 1904 and 1905.

Q. What were you doing then?

A. Then I worked about the bay and the rivers; I was working on dredgers in the river country.

Q. Did you ever operate a boat before the "Seven Bell"?      A. Nothing but sailboats.

Q. That was on pleasure?      A. Yes.

Q. You are not a seafaring man by occupation, are you?      A. I am now.

Q. But you were not then? You have described all the experience you had as a seafaring man?

A. Yes; I was not at that time.

Mr. BELL.—Q. At what time was that?

A. At the time the barge went ashore.

Mr. HUTTON.—Q. Did you ring up this morning to ascertain what the weather was in San Rafael before you left San Francisco—you personally?

A. That morning, no sir, I did not.

(Testimony of G. M. Gilmore.)

Q. How was the wind when you were off California City?

A. Well, it was about the same as when we left the city.

Q. In what direction was it blowing?

A. South.

Q. Didn't you say southwest awhile ago?

A. No, I said south. I said at California Point it was blowing southwest, or almost southwest, between south and southwest. It had not got southwest until we got up almost to where we let the barge go.

Q. And what was it blowing then?

A. Almost southwest; it was squally; it varied a little bit.

Q. Are you familiar with the points of the compass? A. Yes, sir.

Q. The wind was blowing you on shore?

A. No—almost on shore, yes.

Q. Take a look at that chart. Wouldn't a southwest wind blow you [89] clean offshore?

A. No, sir, it would not, it would blow me right on to the shore.

Q. A southwest wind coming around here would blow you offshore, wouldn't it? Isn't this southwest here?

A. Well, that would not make any difference.

Q. How would a southwest wind blow you on shore?

A. The shore is northwest and southeast, a lee shore. Take the compass here.

(Testimony of G. M. Gilmore.)

Q. Well, wouldn't it blow you offshore?

A. No, sir, it would not.

Q. You think a wind that way would blow you into this cove?

A. Yes. The anchor held for a little while and she got off this end of the cove.

Q. When you were towing the barge, while you had hold of her, you say a southwest wind would blow you in that cove?

A. Not clear southwest; if the wind was steady from the southwest we would be able to clear that point, but it was not, it was between south and southwest; the heave was still from the southeast.

Q. The wind was blowing one way and the sea the other?

A. That is the way it was, yes, sir.

Q. How did you come to go in the cove at all?

A. We wanted to go over there to get shelter behind Marin Islands; we did make an attempt to go around McNear's; another barge of our same capacity did and cleared it, she was going here and made it; we almost made it.

Q. Would you get any shelter behind Marin Islands with a southwest wind?

A. Yes, we would get shelter there from any wind.

Q. Where did you first strike the south wind?

A. At California Point.

Q. Where did you get the southwest wind?

A. That was over here, and then it was not altogether southwest.

Q. Wouldn't that southwest wind have a tendency

(Testimony of G. M. Gilmore.)

to blow you right [90] clear out into the bay, and across?

A. No, sir; a southwest trade wind would, but not that kind of a wind.

Q. Is there any difference between a southwest trade wind and any other southwest wind?

A. Yes, sir; there is.

Q. How close was the towboat to the rocks at the time you let go?

A. Well, it had hold of the barge; we had about 150 feet of the line out.

Q. Was she dragging the towboat?

A. She was backing up a little on the towboat.

Q. She was dragging the towboat instead of the towboat dragging the barge?

A. Yes, she was backing it back.

Q. In other words, the wind was so strong then that the towboat did not have power enough to hold the barge against it, and the barge was pulling the towboat back; that is what you mean by backing it, is it not?

A. I don't know what you mean. I say the barge was backing the towboat up at the time.

Q. You mean by that that the barge was pulling the towboat in the opposite direction from the way the towboat *want* to go?

A. You mean at the time we let her go?

Q. Yes. A. Yes, sir.

Q. How long had she been doing that?

A. About ten minutes.

(Testimony of G. M. Gilmore.)

Q. And how far had you drifted in that ten minutes?

A. We didn't drift hardly at all, we found out we were losing, though.

Q. How much did you lose?

A. Well, when we found we were losing we were about five-eighths of a mile offshore, and we run her half a mile offshore when we decided we were losing, say one-eighth of a mile.

Q. Then you began to go in towards the shore again?      A. Yes, sir.

Q. And that is the time you let go?

A. Yes, sir.

Q. What became of your tow-line?

A. We lost it as it washed off the barge. We got the tow-line again. [91]

Q. Did you ever go around to where the barge was, after she went ashore?      A. Yes, sir.

Q. When?

A. We went around the same day we landed; and the next morning, with a small scow and a towboat, we went and took off what was left.

Q. Did you see any of the cargo there?

A. A little damaged grain.

Q. What became of the rest of it?

A. Washed overboard.

Q. Where did it go to? Did it go upon the beach?

A. I don't know; some liquors got up in the quarry.

Q. They stole that?



(Testimony of G. M. Gilmore.)

A. No; it washed overboard and they got it on the beach.

Q. Didn't the quarryman do down and get it?

A. Not that I know of.

Q. If the barge washed ashore, wouldn't the cargo do the same thing?      A. Not necessarily.

Q. Who was the engineer on the boat?

A. Either of us; it only takes one man to operate the boat.

Q. Who started the engine up?

A. My brother.

Q. Had he ever been a seafaring man?

A. Yes; that is, he worked on the bay.

Q. He had never been out to sea?

A. He made one trip.

Q. When did you have two men on the barge, and when did you have one?

A. Sometimes one, and sometimes two; we had these men to handle the cargo, and making fast to a dock, and that was all.

Q. Didn't you have two men on the trip over?

A. Sometimes.

Q. When?      A. At various times.

Q. Was it customary to have two men?

A. Sometimes three; it all depends on how heavy the cargo was.

The COURT.—Q. They were not there for the purpose of manipulating the barge?

A. Only to tie up to the dock.

Q. Their duty was to handle the cargo?

(Testimony of G. M. Gilmore.)

A. Yes, sir. [92]

Q. If two men, or three men, or five men had been on the barge it would not have affected the situation on this morning?

A. I don't see how it would; I don't see how it would help at all; they would be perfectly powerless.

Mr. HUTTON.—Q. They could get the anchor out quicker, couldn't they?

A. No, sir; if two men were there, probably one would have got washed overboard. There was only a bight to hand on to; the way it was, he was washed aft once.

Q. Do they ever have anchor chains?

A. Anchor lines.

Q. Do you use the same line for anchors that they do for mooring the barge?      A. Yes, sir.

Q. It takes time to *bed* it on?

A. A couple of minutes.

Q. If it was bent on, you might save a little time in doing it?

A. Yes, you might save a little time, a minute or so, just to tie a knot in it. The anchor was right at the edge of the barge.

Q. It takes time to get the line and bend it on?

A. The line is right there, at the forward end of the barge.

Q. What was the name of the towboat and the barge that made McNear's Point that day?

A. There was no name on the barge; the towboat was the "John A. Britton."

(Testimony of G. M. Gilmore.)

Q. Was she a stone barge or a cargo barge?

A. The same style barge as ours; I think she was almost a duplicate; she had no house on her.

Q. The house has a tendency to make the barge harder to handle in a wind?

A. Not any harder to handle; it takes a little longer to pull through the water, it takes more time off the wind.

Redirect Examination.

Mr. LILLICK.—Q. Would that anchor have dragged and allowed the barge to go ashore, even if the anchor had been thrown over half an hour before?

A. The anchor hardly *retared* the barge.

Q. My question was, would it have held the barge offshore even [93] if it had been dropped half an hour before?

A. In my judgment, it would not have done much good.

Q. And that difference of time, a minute or two that might have been saved by having two men to drop the anchor, would not have worked to save the barge, would it?

A. No, sir, in my judgment it would not, the barge would have gone ashore just as fast.

Q. How many barges have Heally-Tibbitts?

A. Ten or twelve; they run to the same place.

Q. They can take rock off there? A. Yes, sir.

Q. Do you know any custom in the port of San Francisco of having chains for the anchor, instead of ropes?

(Testimony of G. M. Gilmore.)

A. A great majority have ropes, because the chain, in running overboard, saws the links.

Q. There is no federal regulation requiring them to have chains?

A. No, sir; quite a few go without anchors at all.

Q. When Silva got off the barge, were you there?

A. We went into San Rafael with the towboat and got right out; I guess it took us an hour and a half or two hours; he was off the barge then.

Q. He could have really jumped off and walked ashore, couldn't he?

A. Almost—not quite *quite*.

Q. The water was too deep for that?

A. It was not too deep, but it was 50 feet offshore; he could have stayed there until we got back.

Mr. HUTTON.—I don't think that makes any difference.

Mr. LILLICK.—Q. Do you know anything about Silva's condition of mind when the barge piled up there?

A. He was pretty well worked. He was a good man on the barge. [94]

[Testimony of A. H. Gilmore, for Respondent  
(Recalled).]

A. H. GILMORE, recalled for respondent.

Mr. CHAPMAN.—Q. You were the captain of the "Seven Bells" at the time this accident occurred?

A. Yes, sir.

Q. I will ask you how long you had been towing this barge for the Halvorsen Transportation Com-

(Testimony of A. H. Gilmore.)

pany. A. Since July 28, 1913.

Q. On the night of December 30, what time did you leave the Jackson Street wharf?

A. Between seven and half-past seven.

Q. What was the condition of the weather at the time you left?

A. It was raining and blowing, blowing hard.

Q. What was the condition of the sea?

A. A big heave on.

Q. From what quarter?

A. From the southeast.

Q. Who was on the board of the "Seven Bells"?

The COURT.—Himself and his brother.

Mr. CHAPMAN.—Q. How far did you proceed that night with the tow?

A. Between the seawall and half way to Alcatraz, a distance of about two miles.

Q. And you put back? A. Yes, sir.

Q. Why did you put back?

A. I thought the swell was running too hard, and being dark and raining, and it being so hard to get in up there, we put back.

Q. And when you put back you came to the seawall? A. Yes, sir.

Q. The next morning, December 31, what time did you leave for San Rafael?

A. Somewhere around eight o'clock, or a little after.

Q. What was the condition of the wind and weather at that time?

(Testimony of A. H. Gilmore.)

A. The wind had calmed down; the sea was running pretty good, yet.

Q. Were you up during the night?

A. Yes, I got up twice during the night.

Q. What was the condition of the weather during the night?      A. It was howling.

Q. But in the morning it had calmed down?

A. Yes; I got up about [95] half-past six, and it was calming down; it stopped raining.

Q. Did you have any talk with your brother as to whether or not you should make the trip?

Mr. HUTTON.—I object to that, your Honor; the captain of the vessel talking to the deck hand—

Mr. CHAPMAN.—Well, you might call him the deck hand or the engineer.

Mr. HUTTON.—The very most that would show would be that the captain would not have confidence in his own judgment.

The COURT.—The objection is sustained.

Mr. CHAPMAN.—Q. What time did you leave, 7 or half-past 7?

A. About 8 or a quarter-past 8.

Q. What was your general course? I will ask you to look at this line on the chart and ask you if this was the general course, or the course that you took in making this trip, this lead pencil line drawn here between the seawall in San Francisco to a course in the cove on the Marin shore?

A. That is the general course.

Q. When you left, what was the condition of the wind in crossing over between the seawall and the



(Testimony of A. H. Gilmore.)

southeast point of the Marin shore?

A. About the same as when we left.

Q. What was the condition of the sea?

A. About the same.

Q. When you got off this point, you hauled in toward the shore, did you?     A. Yes, sir.

Q. When did you first experience any bad weather?     A. In here.

Q. What do you mean by "in here"?

A. Right between California Point and Point San Quentin.

Q. What change was there in the weather?

A. It started to blow squally and it rained hard.

Q. From what quarter did the wind blow?

A. From the south.

Q. A southerly direction?     A. Yes, sir. [96]

Q. As you proceeded along to the mouth of the San Rafael Slough, did the wind become stronger or less strong?

A. It started to get squally on account of heading this point; heavy winds from over here always make it squally coming over here; you get about the same pressure here when it comes in puffs.

Q. Now, this is Point San Quentin, and from there to the mouth of the slough, the water is very shallow, is it not?     A. Yes, sir.

Q. And that necessarily means that there is a heavy sea running here?

A. Yes, and on account of the deep water running up here.

Q. When you came along to San Quentin Point,

(Testimony of A. H. Gilmore.)

what was the condition of the weather?

A. Very stormy.

Q. At that time could you have turned back to seek any place of shelter?      A. No, sir.

Q. Could you have gone into the cove indicated off the San Quentin Point?

A. No, sir, we could not get in there.

Q. And you could not turn back?      A. No, sir.

Q. Why couldn't you turn back?

A. Because the sea was running too hard, it would part the line.

Q. You couldn't make any headway against the sea?      A. No.

Q. You proceeded to the mouth of San Rafael Slough?      A. Yes, sir.

Q. How much tow-line did you have out?

A. About 160 feet.

Q. Did you attempt to make San Rafael Slough?

A. We made our regular attempt to take in the line when we got off the entrance.

Q. How much line did you take in?

A. We took in about 25 feet and could not get any more. It ought to be about 30 or 40 feet from the barge.

Q. Did you attempt to make San Rafael Slough?

A. When we found we could not shorten our line, we run off.

Q. If you attempted to make San Rafael Slough, what effect would that have had on the barge?

A. We would have got the towboat in, but the barge would have piled up on the rocks, here. [97]

(Testimony of A. H. Gilmore.)

Q. Then what did you do?

A. We tried to get over behind Marin Islands.

Q. What were you doing at this time?

A. I was down in the engine-room.

Q. How did you get to Marin Islands?

A. We got right up here and found this point was too shallow. We had to go further to leeward. In trying to get back again, that is where we started to lose.

Q. Where did you try to go when you found out you could not get to Marin Islands?

A. We tried to go up again.

Q. When you found you could not make the islands, where did you go?

A. We tried to get by McNear's Point.

Q. What success did you meet with?

A. We got off here and we decided we would put in here with the barge.

Q. But you couldn't weather the point?

A. No.

Q. What is the formation of the point?

A. A rocky point.

Q. After you found you could not clear that point, what did you do?

A. The boat started to bump then.

Q. Which boat?

A. The towboat; when she ran on the sea she got the wheel out of the water, and the barge carried her up.

Q. In other words, you found your boat bumping?

A. Yes, sir.

(Testimony of A. H. Gilmore.)

Q. After you found that she was bumping, what course was the tow making? In other words, were you going ahead or going backwards?

A. We were drifting back.

Q. Drifting back toward this cove?

A. Yes, sir.

Q. Do you recollect letting go the tow-line?

A. Yes, sir.

Q. How far from the shore were you when you let go the tow-line?

A. About a quarter of a mile from here, where we expected to land.

Q. You mean about half a mile from the bend in the cove?      A. Yes, sir.

The COURT.—A quarter of a mile, he said; you added a quarter to it. [98]

Mr. CHAPMAN.—Q. A quarter of a mile from where you let go to the beach of the cove?

A. Yes, sir.

Q. What was the formation of the points of that cove?

A. Rocky on both sides. This side was the worst.

Q. When you let the line go, what happened?

A. The barge started to drift, and the man that was forward dropped the anchor; we went right to San Rafael then; we waited around there until we saw her land on the beach.

Q. Where did she land?

A. She came right in there and came up and around here and landed here.

Q. On these rocks?      A. Yes, sir.

(Testimony of A. H. Gilmore.)

Q. What depth of water was there when you let go the barge?

A. I should judge about 4 feet 6.

Q. What does the "Seven Bells" draw?

A. She draws about that much.

Q. And the barge draws about how much?

A. About 2 feet.

Q. In your experience in the towboat business, did you do all that you could for the purpose of *save* that barge from going ashore? A. Yes, sir.

Q. And, in your best judgment, was that the proper thing to do, to let her go at that place?

A. Yes, sir.

Q. In exercise of your judgment, was it proper for you to leave San Francisco on the morning of the 31st of December with that tow? A. Yes, sir.

Q. In making this trip that you made from San Francisco to San Rafael in the winter months, where do you experience the heaviest weather?

A. Right along in here.

Q. Where do you mean by "here"?

A. Angel Island and San Quentin.

Q. Where is that, relative to Southampton Shoals? A. Northwest.

Q. You experienced your heaviest weather there?

A. Yes, sir.

Q. In view of the weather that you experienced off this point that [99] you have indicated, do you feel you were justified in pursuing your journey that way? A. Yes, sir.

Mr. BELL.—Q. You were running the engine,

(Testimony of A. H. Gilmore.)

were you, at the time the line was dropped? Were you attending the engine?      A. Yes, sir.

Q. What was the condition of the boat's propeller at that time?

A. She was jumping up and down as usual; the sea was running high; she would be out and in about every three or four minutes.

Q. If you had had a larger power boat than the "Seven Bells," what would have been the effect in that same position?

The COURT.—He would not have got in there.

A. We would not have got in; it was 4 feet 6—4 feet 6 above mean low water.

The COURT.— If he had a heavier tug in there—

Mr. BELL.—I don't mean in the creek, your Honor, I am referring to the time the tow-line was dropped.

The WITNESS.—*I* was high water then.

Mr. BELL.—I am now referring to that time, and if you had a higher power boat, would you have been able to keep the barge from going ashore where she did go ashore?      A. No, sir.

Q. Why not?

A. Because the boat would have bumped on the bottom and the tow-line would have parted.

The COURT.—If you had a higher power tow-boat, you would have had a boat with a deeper draft, and you would not be in that position at all?

A. No, sir, I would not have been there at all.

The COURT.—So, we are discussing an idle thing, because a bigger boat would not have been there.



(Testimony of A. H. Gilmore.)

Mr. LILLICK.—Q. You never consulted the transportation company, as to when you should start out in the morning, or anything of that kind, did you?     A. No, sir.

Q. You used your own judgment as to when you should go?     A. Yes, sir. [100]

Q. You never received any telephone message from the transportation company that morning, telling you to go or not to go, did you?     A. No, sir.

Cross-examination.

Mr. HUTTON.—Q. Is it not a fact that Mr. O'Brien rang you up that morning and told you not to start?     A. No, sir.

Q. Did he ring your brother up?     A. No, sir.

Q. Did you talk to Mr. Coddling that morning?

A. No, sir.

Q. Didn't Mr. Coddling go down that morning and tell you he had heard from San Rafael, and he didn't think it was safe to start?

A. No, sir, nobody came around at all.

Q. Did you, yourself, ring up San Rafael to ascertain what the weather was over there?

A. No, sir, I never went on the dock.

Q. You just started out because you thought you would take a chance?

Q. I was going to make a trip; I was one tide late, and I had to make a trip. I had vegetables and fruit.

Q. You made no investigations to find out what the sea was, or what the weather was?     A. No, sir.

Q. Is it not a fact that the seawall is sheltered to

(Testimony of A. H. Gilmore.)

some extent, to a large extent, both from a southeast and a southwest wind?

A. You can see out in the bay ahead of you for a mile from the seawall; at night you cannot see.

Q. You started out on what the appearance of the bay was to you, did you?      A. Yes, sir.

Q. And you made no other investigations, although you knew there had been a storm the night before, did you not?      A. Yes.

Q. How long have you been a seafaring man?

A. I have been around the bay since 1904 and 1905.

Q. What boats have you ever been on?

A. I run on small launches, sailboats and scows.

[101]

Q. How long were you on the "Seven Bells"?

A. About three years.

Q. What had you been doing with her before?

A. Before this towing job, we were peddling vegetables and fruit with her.

Q. Was that the first towing job you had with her?

A. Yes, sir.

Q. And you had been running her three years?

A. Yes, sir.

Q. Peddling vegetables where?

A. From up in the river countries down around San Rafael and San Francisco and Sausalito.

Q. That is, you would go and buy vegetables and take them around to the markets and try and sell them?      A. Yes, sir.

Q. And then you got this contract and went into the towing business?      A. Yes, sir.

(Testimony of A. H. Gilmore.)

Q. That was largely all the experience you had with her as a towboat, from July to December?

A. Yes, sir.

Q. Had you ever been on any other towboat at that time?

A. You mean at the time I had the "Seven Bells"?

Q. At the time you towed this barge, had you ever been on any other towboat, or on any other boat doing towing, than the "Seven Bells"?

A. No, sir.

Q. That was the first towing experience you had?

A. Practically, yes, sir.

Q. Who steered the boat?

A. My brother had it part of the way, when we left San Francisco.

Q. Sometimes you would steer and sometimes he would steer?     A. Yes, sir.

Q. Did you look at the newspapers that morning to ascertain what the probabilities of the weather were?     A. No.

Q. You made no prognostications as to weather, you simply started out because the bay looked fairly good to you?     A. Yes, sir.

Q. What effect had the wind on you when you got to California Point? Did it blow you on there or off there?

A. It was coming right up behind us, it was on our course. [102]

Q. You had a fair wind from California Point down?     A. Yes, sir.

Q. When did the wind cease to be fair?

(Testimony of A. H. Gilmore.)

A. After we could not shorten our tow-line, right off the mouth of the creek.

Q. In what direction was the wind then?

A. It hauled southeast and southwest, coming in puffs.

Q. Do you mean from southeast to southwest?

A. Southeast to southwest.

Q. Where did you have the southeast wind?

A. When we were coming up from California Point to San Quentin Point.

Q. Are you sure it was southeast there?

A. Yes, I think that is what they call it, a southeast wind, it was coming up the bay.

Q. Your brother said a minute ago it was southwest there. Are you right, or is he right; which do you think is right?

A. Well, it is all a matter of opinion. As a general direction, I would call it a southeast wind.

Q. Would a southeast wind at California Point be a fair wind for you?      A. Yes, sir.

Q. Is it not a fact that it would not be, that it would be a beam wind?

A. Not exactly beam; I would not call it a beam wind.

Q. Where did you first strike the wind that had a tendency to throw you toward the shore?

A. After we got off the mouth of San Rafael Creek.

Q. Why couldn't you shorten your tow-line there?

A. When you round her and slow down, it pays right off.

(Testimony of A. H. Gilmore.)

Q. The wind got it?

A. Yes, the wind paid the bow of the barge off to the land, and at an angle like this, and you cannot take in any line, because there is a strain on it all the time.

Q. Why did you keep so close to shore?

A. The entrance to the place is right close to shore.

Q. How far did the barge go ashore from the quarry? How far was it from the quarry where the barge went ashore?

A. About one-eighth [103] of a mile.

Q. Where is the quarry, at what point?

A. The quarry is between McNear's Point and the point where the barge went on.

Q. It is right at the projecting point, is it not?

A. The quarry is in the cove, between the point where the barge went on and McNear's Point. There is another indenture there.

The COURT.—Q. You stated in some portion of your testimony that the wind pressure was probably the same there as on the bay, but coming over the hills it had a tendency to create squalls: Just what do you mean by that?

A. It makes a different direction to the wind; it will make a southwest wind out of a southeast.

Q. What do you mean by the wind pressure, do you mean the velocity? A. Yes, sir.

Q. Do I understand you to say that the velocity of the wind in there was the same as it was upon the bay, but coming over the hills it made it more difficult for you to handle the barge—is that right?

(Testimony of A. H. Gilmore.)

A. Yes; that is, up on the other side of San Quentin Point, north of San Quentin Point.

Q. Where did it increase in velocity?

A. It increased after we left California Point; that is where it started to increase.

Mr. HUTTON.—Q. Now, I will ask you this: Is it not a fact that the wind was blowing from your boat toward the hills, over the bay and toward the hills? A. Yes, sir.

Q. That is correct. How could the hills have had any effect on the wind, where you were?

A. It hit the hills and made a curve in the wind, making it squally.

Q. So the wind would come back against itself and come toward you? A. Yes, a whirlwind.

Q. That would have a tendency to blow you off shore, if such a thing was possible, wouldn't it?

A. Yes, along there. It was the [104] heave that takes you off shore.

Q. Was it the swell, or the wind, that put you ashore?

A. The heave, the swell running ashore and the wind in that same direction, and the weight of the barge, the sea carried it right ashore. The wind kept it over to that point all the time. The barge goes right where the sea carries her.

Q. Did you ever know anything like that happening before, that the wind struck a hill and then came back against itself and made a contrary wind?

A. Yes, sir.



(Testimony of A. H. Gilmore.)

Redirect Examination.

Mr. CHAPMAN.—Q. Just step up to the chart a minute: I am pointing now to California Point: When you reached California Point what was the direction of the wind?

A. It came right here.

Q. What direction would that be?

A. Southeast.

Q. So the wind was behind you coming up to California Point? A. Yes, sir.

Q. When you reached California Point you changed your course, did you? A. Yes, sir.

Q. That pencil mark indicates your course?

A. Yes, sir.

Q. Now, it appears from the pencil mark there that the course was changed. A. Yes.

Q. After you changed your course from California Point, did the wind continue to blow from the southeast? A. I would say it was southeast, yes, sir.

Q. When you got off San Quentin Point, from what direction was the wind blowing?

A. From there around, it was between southeast and southwest, it hauled around.

Q. It hauled around between southeast and southwest? A. Yes, sir.

Q. Did the wind continue to blow from between southeast and southwest during the rest of your voyage? A. Yes, sir. [105]

Q. And you say it was squally, besides?

A. Yes, very squally.

Q. With reference to Mr. Hutton's questions, that

(Testimony of A. H. Gilmore.)

the wind hit the hills and came back again, did you understand what he meant?

A. Yes, he figured out it would blow us away from the shore.

Q. What was the direction from which the wind blew after you left San Quentin Point?

A. The direction of the wind after we left San Quentin Point was about southwest.

The COURT.—Q. When did you first realize you could not make San Rafael Slough?

A. When we started to shorten the tow-line.

Q. When was that?

A. That was about 1000 feet from the mouth.

Q. How far were you then from the channel—I don't mean the channel of the slough, but the channel of those straits there. This is a shoal, and this is deep water. I understand part of the difficulty arose from getting on the shoals and the engine not working. When you realized you could not get in here what was there to prevent you from taking deep water and avoiding those difficulties?

A. We could not get back to deep water this way; you could not go in there against a head sea.

Mr. HUTTON.—Q. You didn't have power enough to pull it?

A. No, sir.

The COURT.—Q. It was because of lack of power?

A. Yes, and on account of the power not being on the water.

Mr. HUTTON.—Q. It finally resulted in the barge

(Testimony of A. H. Gilmore.)

pulling you, instead of you pulling the barge. Is that correct?

A. Yes, sir, the boat drifted backwards.

Mr. BELL.—Q. You and your brother owned the “Seven Bells” yourselves?      A. Yes, sir.

Q. Just you two?      A. Just ourselves.

Mr. CHAPMAN.—We have not any more witnesses here this afternoon, your Honor. [106]

Mr. LILLICK.—I would like to put Mr. Cheda on the stand again.

[Testimony of V. J. B. Cheda, for Respondent.]

V.J. B. CHEDA, recalled.

Mr. LILLICK.—Q. How many tons of wheat were there in this shipment?

A. It amounted to \$587 and some cents; it must have been about 25 tons.

Q. Do you remember having a discussion either with Mr. Coddington or Mr. O’Brien, about the wheat, and finally learning that the only means they had of disposing of it was to sell it for chicken feed?

A. I talked with Mr. O’Brien. My advice to him was that it should be disposed of right away, as it would only swell and decay.

Q. And he did dispose of it?

A. I believe so.

Mr. LILLICK.—I heard this afternoon for the first time that you have not had the money for that; we will either send you that money to-morrow through Mr. O’Brien, or give it to you.

Mr. HUTTON.—It is a little late in the day to do that after being compelled to bring a suit.

(Testimony of V. J. B. Cheda.)

Mr. LILLICK.— I was very much surprised to find out this afternoon about this. Mr. Gregory was as much surprised as I was to know that Mr. Cheda did not obtain the proceeds from the sale of the wheat. It was his understanding that Mr. Cheda and either O'Brien or Coddington had a discussion about it, from what he hears over the telephone from Mr. Coddington, and Mr. Cheda did not want the money, that he wanted the whole amount or nothing. I was not aware of that situation. I will have the money sent to you to-morrow.

The WITNESS.—Well, I am no lawyer, and I don't know what to tell you to do.

Mr. HUTTON.—Q. Did you know in advance that they were going to sell that wheat? Did they tell you they were going to sell it? [107]

A. That was the intimation they gave me.

Mr. LILLICK.—If your Honor please, I don't desire any point made on this from a legal standpoint. If Mr. Hutton had commenced this suit against us for the proceeds of that wheat, or made a demand on us for the proceeds of the wheat, he would have gotten it.

Mr. HUTTON.—You didn't even have the grace to make a tender in your answer.

Mr. LILLICK.—I simply found out about it this afternoon. I want the Court to understand we did not try to take the money and put it in our pocket.

Mr. HUTTON.—They had no right to sell the wheat, anyway.

Mr. LILLICK.—We will mail you the money to-

(Testimony of V. J. B. Cheda.)

morrow, Mr. Cheda, at San Rafael.

Mr. BELL.—If your Honor please, as far as Mr. Chapman and myself are concerned, we are willing, if Mr. Hutton wants to conclude his case now, to conclude our case now.

Mr. HUTTON.—I wanted to put Mr. O'Brien on. I cannot very well get along without him. I am exceedingly sorry I did not subpoena him. It is the first time I have ever been tripped up on a matter of that kind.

Mr. BELL.—It might possibly be, if it is not prying into your case, that we might admit what he will testify to.

Mr. HUTTON.—You won't admit it. We want to prove that on that morning he telephoned to Mr. Gilmore, and also Mr. Coddington, and told him not to start on that voyage, that it would be unsafe to start.

Mr. BELL.—Well, I suggest that we put the case over, then, until Thursday afternoon.

The COURT.—Very well, Thursday at two P. M.

(The further hearing of the cause was thereupon continued to Thursday, January 29th, 1915, at ten A. M.) [108]

**[Testimony of F. D. Young, for Libelant.]**

Friday, January 29, 1915.

F. D. YOUNG, called, sworn and examined as a witness on behalf of the libelant.

**Direct Examination.**

Mr. HUTTON.—Q. You are connected with the United States Weather Bureau in San Francisco?

A. I am.



(Testimony of F. D. Young.)

Q. In what capacity? A. Assistant observer.

Q. Have you the record showing the condition of the weather in San Francisco, that is, the records of the United States Weather Bureau, for December 30th and 31st, 1913? A. I have.

Q. Will you please turn to them and tell us what the condition of the weather was, with reference to wind, commencing, say, at three o'clock in the afternoon of December 30, 1913, down to three o'clock the next day?

A. Do you want the maximum velocity,

Q. Yes.

A. It blew forty miles an hour between three and four.

Q. What hour was that? A. At 3:35 P. M.

Mr. LILLICK.—Q. What day was that?

A. December 30th. Thirty-seven miles an hour at 4:53 P. M.; thirty-six at 5:50; thirty-eight at 6:55; forty-two at 7:12; thirty-seven at 8:15; thirty-eight at 9:26; forty at 10:40, and thirty-seven at 11:05.

Mr. HUTTON.—Q. And coming down to December 31st, 1913?

Q. We only record the maximum velocities when they exceed thirty-six miles. There were none on the next day, except it blew forty miles an hour at 1:30 P. M. That was the only time it exceeded [109] that; that was the only time it exceeded thirty-six miles an hour.

Q. What were the conditions at one o'clock in the afternoon?

A. The wind was high. The total number of



(Testimony of F. D. Young.)

miles in the different hours from twelve to one A. M. was twenty-four, one to two; twenty-eight, two to three, and thirty, three to four.

The COURT.—Q. Is that in the morning?

A. Yes. Three to four, twenty-one; four to five, twenty-one; five to six, nineteen; six to seven, eighteen; seven to eight, twenty-two; eight to nine, twenty-one; nine to ten, twenty-three; ten to eleven, twenty-six; eleven to twelve, twenty-five; twelve to one, thirty-three; one to two, thirty-four; two to three, twenty-seven; three to four, seventeen.

Mr. HUTTON.—That is enough. Are those storm winds or otherwise?

A. We call them storm winds when the velocity exceeds thirty-six miles an hour.

Q. Those that you have given us for the 31st, are those average winds?

A. That is the total number of miles that the wind blew during those hours.

Q. That is the average for the hour, then. Is that the average for the hour? So that at some times during those hours the wind was higher than at others? A. Oh, yes, they were.

Q. There is nothing to show what the maximum was during those hours?

A. Except during one hour between one and two—between one and two: at 1:30 P. M. it blew forty miles an hour.

The COURT.—Q. But your record shows the average was thirty-four?

A. Yes, that was the total number of miles.

(Testimony of F. D. Young.)

Mr. HUTTON.—Q. State whether the storm signals were displayed in San Francisco during the whole of that time.

A. They were; they were put up at 7:30 A. M., on the 30th. [110]

Q. When were they taken down, in San Francisco?

A. Seven A. M., on January first.

Q. They were displayed continuously, then, during that time?      A. Yes.

Q. Where are those observations taken?

A. From the roof of the Merchants' Exchange Building.

Q. Is that where the storm signals are displayed?

A. Yes.

Q. That is a high point in San Francisco, is it?

A. Yes.

Mr. HUTTON.—That is all.

Cross-examination.

Mr. LILLICK.—Q. In order that I may understand this correctly, on the 31st of December your records stopped at 1:30 P. M., and that means no wind in excess of thirty-six miles an hour?

A. Yes.

Q. And on the day following, that is, December 31st—

A. I thought that is what you had reference to.

Q. Yes; on the day following, December 31st, commencing at twelve midnight, December 30th, and the day following, December 31st, the record that you have given of the various hours from twelve to one and one to two, and two to three, specify the num-

(Testimony of F. D. Young.)

ber of miles the wind blew during those particular hours?   A. Yes.

Q. Between twelve and one the wind blew twenty-four miles an hour?   A. On December 31st?

Q. December 31st, from twelve to one?

A. Thirty-three miles.

Q. Yes, that is correct. And from twelve to one, the twelve hours just before that, it blew twenty-four miles?   A. On December 30th?

Q. December 31st.

A. Oh, that is A. M., from twelve to one, twenty-four miles. [111]

Q. That means that the wind during that whole hour blew twenty-four miles?   A. Yes.

Q. During the next hour it blew twenty-eight miles?   A. Yes.

Q. During the next hour it blew thirty miles?

A. Yes.

The COURT.—Q. The wind blew with uniform velocity during that period?

A. No, it generally blows in gusts.

Q. How do you arrive at the figures you put down? You say you do not record the maximum unless it blows over thirty-six miles?

A. We count the total number of miles that the wind blows in an hour.

Mr. HUTTON.—Q. During some of those hours where the wind shows say twenty or twenty-five miles an hour, it may have blown up as high as thirty-five, during a portion of that hour?

A. It may have, yes, anywhere up as far as thirty-six miles.

(Testimony of F. D. Young.)

Mr. BELL.—Q. What was the velocity of the wind during seven and eight on the afternoon of the 30th?

A. The maximum, or the total number of miles?

Q. The maximum.      A. Forty-two.

Q. What was it from eight to nine?

A. Thirty-seven.

Q. And from nine to ten?      A. Thirty-eight.

Q. Ten to eleven?      A. Forty.

Q. Mr. Young, were the storm signals up yesterday?      A. They were put up yesterday afternoon.

Q. At what time?      A. About two o'clock.

Q. And they were up all night?      A. Yes.

Q. And up this morning?      A. Yes.

Q. All morning?

A. I believe so. I am not sure whether they are down yet or not.

Mr. HUTTON.—Q. When a storm signal is displayed you cannot tell to the exact minute when the storm is coming, can you?      [112]

A. No, sir, we cannot.

Q. It may come in a minute and it may come within five or six hours?      A. That is true.

Mr. BELL.—Q. And it might not come for a day or so?

A. We always expect it within twenty-four hours when we hoist the signal.

Mr. BELL.—That is all.

[Testimony of J. M. O'Brien, for Libelant.]

J. M. O'BRIEN called, sworn and examined as a witness on behalf of libelant.

Direct Examination.

Mr. HUTTON.—Q. What is your occupation?

A. Well, I have been agent for the company over there in San Rafael.

Q. For how long?

A. I guess I have been working at it for the last six or seven years.

Q. You were the agent there for the Halvorsen Transportation Company for a long period, were you not?     A. Yes.

Q. And you were such agent during the month of December, 1913?     A. Yes.

Q. What did you do as agent?

A. Well, I saw that the freight was distributed right, and kept track of the business on that end.

Q. When the barges come in, you deliver the cargo, and load them up again, and send them out?

A. Well, I don't exactly do that.

Q. How many barges a day would you unload?

A. Just one barge.

Q. Do you know this barge that the Halvorsen Transportation Company were operating in December, 1913?     A. Yes.

Q. About how large a barge was she?

A. Well, I could not give the exact measurements of her. It was a pretty good-sized barge.

(Testimony of J. M. O'Brien.)

Q. Did she have a house on her?

A. Yes, there was a large house on her.

Q. About how high was the house?

A. I guess the house must have been at least eight feet.

Q. About how long was it?

A. Well, it covered the barge all except, I guess, about twenty feet.

Q. Was it as high as the barge?

A. Yes, it covered the whole barge.

Q. Have you an idea about how wide the barge was?

A. I think it was in the neighborhood of twenty-eight or thirty feet.

Q. Did that house make the barge more difficult to tow in a wind, when there was a wind?

Mr. BELL.—This man has not been qualified as an expert.

The COURT.—Objection sustained.

Mr. HUTTON.—Q. Have you had any experience in towing barges?

A. Well, I have never towed any of them myself, but I can tell pretty near what they can do.

Q. Do you know Mr. Gilmore, of the gasoline boat "Seven Bells"?

A. Yes.

Q. The "Seven Bells" towed that barge at times, did she not?

A. Yes.

Q. Did you ever have any conversation with Mr. Gilmore as to the capacity of that towboat to tow that barge?

A. Well, yes, I did.

Q. What?

A. Yes, I did.



(Testimony of J. M. O'Brien.)

Q. When?

A. Well, that was pretty near an every-day occurrence.

Q. What is that?

A. That was pretty near an every day occurrence.

Q. What did you say?

A. Well, we wanted him to get a smaller [114]  
boat.

Q. Did you want a smaller barge? A. Yes.

Q. Because you could not handle it, or what?

A. The barge was too large for his boat.

Q. She was too large for his boat? A. Yes.

Mr. LILLICK.—I object to that as calling for the conclusion of the witness.

The COURT.—Objection sustained.

Mr. HUTTON.—Q. Do you remember the morning of December 31, 1913. A. Yes.

Q. What kind of a morning was that, over in San Rafael?

A. Well, it was a very stormy morning.

Q. Do you know a towboat called the "Golden Eagle"? A. Yes.

Q. Who operated that boat at that time?

A. The same company, the Halvorsen Transportation Company.

Q. What kind of a boat is she?

A. Well, she is built for a towboat, a more powerful boat than the "Seven Bells."

Q. Was the "Seven Bells" build for a towboat?

Mr. LILLICK.—I object to that as calling for the conclusion of the witness.

(Testimony of J. M. O'Brien.)

The COURT.—Objection sustained.

Mr. HUTTON.—Q. Do you know whether the “Seven Bells” was built for a towboat, or not?

Mr. LILLICK.—Same objection.

The COURT.—Objection overruled.

A. Well, I don't know as she was built for a towboat; she was—unless they put an engine in her—

Q. What did she do before she had an engine put in her?

A. She was peddling, I believe, potatoes and one thing and another.

Q. Do you know what she did before that? [115]

A. I don't know what she did before that. I remember of seeing her come up the creek with potatoes and lots of things.

Q. Do you know what the horse-power of the “Golden Eagle” was?

A. I don't exactly know, but I think it is about ninety.

Q. Do you know what the horse-power of the “Seven Bells” was?

A. Yes; she is supposed to have fifty horse-power, Standard engine.

Q. On the morning of the 31st of December, 1913, did you have any conversation with Mr. Codding from San Rafael to San Francisco, over the phone?

A. Yes.

Q. Who was Mr. Codding?

A. Well, Mr. Codding was the man supposed to have charge of the other side, of the San Francisco side.

(Testimony of J. M. O'Brien.)

Q. What was the conversation?

A. Well, I telephoned that the boat wasn't there—the barge had not come in, and I asked him if the barge had left yet. He said, "Yes." I asked him if the "Golden Eagle" was lying there and he said, "Yes." I told him it would be a pretty good idea if he would connect up with the "Golden Gate," because that boat could never make that swing into the creek, the wind was blowing too strong.

Q. What did he say?

A. Well, now, that I can't say just exactly what he did say.

Q. Did he make any response at all?

A. Well, I think he says: "Oh, they will make it all right," or something to that effect.

Q. How long would it have taken the "Golden Eagle" to come from San Francisco to San Rafael, light?

A. She ought to be able to make it in at least an hour and a half, or an hour and three-quarters.

Q. What time of the morning was it that you had this conversation with Mr. Codding? [116]

A. As near as I can remember it was about half-past eight, or in that neighborhood.

Q. Did you see the barge and the "Seven Bells" when they got off the mouth of San Rafael Creek?

A. No, I did not see it until after it was wrecked.

Q. Did you see the barge after it went ashore?

A. Yes.

Q. What became of its cargo?

(Testimony of J. M. O'Brien.)

A. Well, there was quite a good deal of it washed overboard.

Q. Well, that that was not washed overboard, what became of it?

A. Well, there was quite a little of it stolen off of it that night.

Q. What is that?

A. There was quite a little of it stolen that night, off the barge. Well, there was a barrel of whiskey on the barge, but when we went up and got on the boat we could see that was gone—you could see the cargo had been ransacked.

Q. Do you know by whom?

A. Well, that morning when we went over there they all seemed to be feeling pretty good. There are quite a number of men working there.

Q. With respect to the wheat that was on the boat, what became of that?

A. We took all that was left on the boat off on to this other boat we brought down. I sold it at San Rafael.

Q. How much did you sell it for?

A. I couldn't say how much—a hundred and thirty-eight or a hundred and thirty-six dollars.

Q. Whom did you turn the money over to?

A. Well, I sold part of it to the Martins, and I turned the bill into the Halvorsen Transportation Company, and I turned the rest in in cash—I did not turn it in; I deposited it in the bank, which I always did, and then sent them the deposit slip for the amount—a duplicate.

(Testimony of J. M. O'Brien.)

Q. You have had some experience during the time you have been over there with the towing of those barges, have you not? [117] A. Yes.

Q. In your judgment was Captain Gilmore a competent man to handle that barge at that time of the year?

Mr. BELL.—That is objected to as calling for the conclusion of the witness, and no foundation is laid for it. This man has testified that he is not a tow-boat man.

Mr. HUTTON.—He has seen those barges handled over there by different captains.

Mr. BELL.—That would not qualify him to answer the question.

Mr. HUTTON.—Q. Did you ever see these barges taken along side of the dock—they were unloaded alongside of the dock?

A. Yes, I have seen it done at both ends, San Francisco and San Rafael.

Q. Who placed them alongside of the dock?

A. The towboat man was supposed to place them alongside of the dock.

Q. Did you see different captains do that work during the period that you were agent in San Rafael, different captains of different towboats? A. Yes.

Q. Covering how long a period?

A. Well, before the Halvorsen Transportation Company took it over we had the Crowley people. Before they took it they would handle one barge and one boat every day, just the same as these people were doing.

(Testimony of J. M. O'Brien.)

Q. What is that?

A. They would handle one barge every day just the same as the Halvorsen Transportation Company.

Q. How many captains have you seen handle those barges during that time you were agent over there, or over here?

A. I have seen quite a number of captains handle barges, because I have done work for those people in that line.

Q. Is it your duty to supervise the handling of the barges at the dock?

A. No, sir; it is up to the captain or the men [118] doing the towing to land there.

Q. Did you see a barge landed every day?

A. Yes—well, not every day; sometimes they would come in at night.

Q. I will ask you this question: Do you think that Captain Gilmore was sufficiently experienced to handle that barge, a competent man to handle it?

Mr. BELL.—Same objection.

The COURT.—Objection overruled.

A. No, I don't think he was an experienced man at the business.

Mr. HUTTON.—Q. On that morning of December 31, 1913, was there any barge loaded with freight taken over in the vicinity of San Rafael, that you know of?

A. Well, when I got down to Point San Pedro that day, why, they told me down there—

Q. I do not care what they told you. Did you see any barge?



(Testimony of J. M. O'Brien.)

A. No, there was no barge come in to San Rafael.

Q. Was there a barge that came into San Rafael that morning?     A. No, sir.

Mr. HUTTON.—I think that is all.

Cross-examination.

Mr. BELL.—Q. Did you phone Mr. Coddington, or did Mr. Coddington phone you, on the morning of December 31st?     A. I phoned him.

Q. From San Rafael?     A. Yes.

Q. At the time you phoned him you thought the "Seven Bells" had left the night before?

A. I asked him where the boat was and he said it was gone. As a general rule they could get in at night, unless it was on account of the tide, and then they would come in early in the morning.

Q. You were with the Halvorsen Transportation Company, were you not, in July of 1913?

A. July of 1913? [119]

Q. Prior to the time this accident occurred?

A. Yes, I guess I was. I have been with them from the time that they took the business.

Q. You knew during all of that time that the "Seven Bells" did tow this barge back and forth between San Francisco and San Rafael?     A. Yes.

Q. And you knew that Mr. Gilmore was operating the "Seven Bells"?     A. Yes.

Q. Now, this conversation you had with Mr. Gilmore, Mr. O'Brien, was not that with reference to navigating the barge in San Rafael Creek?

A. No, sir.

Q. You are sure of that that?     A. Yes.

(Testimony of J. M. O'Brien.)

Q. When did that conversation take place?

A. That conversation took place pretty near every time he came in. It was not one conversation but it continued during that time he was around there.

Q. What was the substance of that conversation?

A. Well, the barge was too big for him to handle with the house on it.

Q. Did you ever have any accident prior to this time?

A. Not on account of the towing. It was too hard towing for the boat.

Q. You had never had any trouble prior to this accident?

A. No, sir. Of course we were late many times, but not any such troubles as that.

Q. Well, now, when was the first conversation you had to that effect, with Mr. Gilmore?

A. Well, that I can't tell you.

Q. Was it a month or two before this accident happened?

A. Oh, no. It was a conversation from the time he started in to run. He seen that it was too heavy for him to handle. [120]

Q. You do not know what the horse-power of the "Golden Eagle" was?

A. I don't know exactly, but I think she is about ninety horse-power.

Q. The "Seven Bells" was a fifty horse-power boat?

A. She was a fifty horse-power, Standard engine.

(Testimony of J. M. O'Brien.)

Q. Capable of developing a little bit more?

A. Well, that is what they all say, they are capable, but whether they do it or not is another thing.

Mr. BELL.—That is all.

Mr. LILLICK.—About this conversation you had with Mr. Coddling over the telephone, you testify that as near as you can remember the conversation was about 8:30 in the morning? A. Yes.

Q. How do you fix the hour at 8:30 in the morning? A. Well, in that neighborhood.

Q. What caused you to telephone to Mr. Coddling?

A. Why, she was storming over there.

Q. Did you see Mr. Cheda before you telephoned?

A. Did I see Mr. Cheda before I telephoned?

Q. Yes.

A. I think that Mr. Cheda came in about the time I was telephoning, looking for his wheat, because the wheat was shipped the day before, and left over on the wharf on this side, it was not taken up until the next day.

Q. Do you remember Mr. Charles Coddling's telephone number at his house?

A. The telephone number at his house?

Q. Yes. A. No, I do not.

Q. Did you know it while you were working for them? A. No, sir.

Q. Did not you know his house telephone number?

A. I suppose the house telephone number was in the book, but I never paid any attention to that.

[121]

Q. Do you know what time he usually came down

(Testimony of J. M. O'Brien.)

to his office?      A. That I could not tell you.

Q. I am now attempting to fix this telephone conversation you testify that you had with him, whether you had it with him at his house, or whether you had it with him after he came to his office?

A. I do not think I had it with him at his house. I had it with him at his office.

Q. He was down there at the office when you telephoned?      A. Yes.

Q. What did he say about the "Golden Eagle" when you asked him about the "Golden Eagle"?

A. Well, that I could not exactly say. I asked him if the "Golden Eagle" was there and he said yes, she was lying here at the wharf. I told him that I did not think this boat could make it, and it would not be a wise thing for him to start out with it. He put it off this way, that he thought she would make it all right.

Q. Do you know whether or not the "Golden Eagle" belonged to the Halvorsen Transportation Company?

A. It is reported as belonging to them. They were using it at the time.

Q. Were they using it, or were the Gilmores using it?      A. They were using it.

Q. So that in saying Halvorsen Transportation Company, you are not distinguishing in your own mind between the Halvorsen Transportation Company and the Gilmore boys, who were running the launches. In other words, you do not know whether the "Golden Eagle" belonged to the Halvorsen

(Testimony of J. M. O'Brien.)

Transportation Company or whether it belonged to the Gilmores?

A. Oh, yes, I got a pretty good idea that it belonged to the Halvorsen Transportation Company.

Q. That is only what you think about it; you don't know?

A. According to the records it belongs to them.

[122]

Q. Did the "Seven Bells" belong to them?

A. Belong to who?

Q. The Halvorsen Transportation Company.

A. No, sir.

Q. Whom did it belong to?

A. Well, that belonged to the Gilmores.

Q. Then the Gilmores owned the "Seven Bells" and the Halvorsen Transportation Company owned the "Golden Eagle"? A. Yes.

Mr. BELL.—Q. You never saw the Gilmores on the "Golden Eagle," did you? A. No, sir.

Q. They never ran it, to your knowledge?

A. Not to my knowledge, no, sir.

Q. Now, these conversations that you had were with the captain of the "Seven Bells"? A. Yes.

Q. Gilmore was the captain of the vessel?

A. Yes.

Q. Was there anybody else around when you had the conversations with him?

A. His brother was there all the time.

Q. You are sure you had that conversation with the captain of the "Seven Bells"? A. Yes.

The COURT.—Q. Did you ever report to the Com-

(Testimony of J. M. O'Brien.)

pany that Mr. Gilmore was, in your judgment, inexperienced?

A. They knew it; they were going to make a change; they were figuring on some one to take his place, but they were never able to get anyone to take his place.

Mr. LILLICK.—Q. Have you had any trouble with the Gilmores, any personal trouble?

A. No, sir.

Q. You have no feeling against them at all?

A. No, feeling toward them, as far as I know.

Q. Who of the Halvorsen Transportation Company did you say anything to about Mr. Gilmore's competency?

A. Well, they knew it themselves. He was fighting with them all the time.

Q. You never talked to them about it?

A. Well, Mr. Coddling [123] said he was going to make a change just as soon as he could get somebody to take his place.

Q. It is only your conclusion as to what you think Mr. Coddling knew of Gilmore's competency?

A. It is no conclusion. They knew it.

Q. How do you know they knew it?

A. Well, I have talked to George Coddling about it.

Q. What did you say to him about it?

Mr. BELL.—That is objected to as not binding upon us.

A. He said he would make a change just as soon as he could get somebody to take his place, but he didn't want him to leave him in a hole. He did not



(Testimony of J. M. O'Brien.)

want to say much to him because he was afraid Gilmore would quit and leave him in a hole.

Mr. LILLICK.—Q. Did you have more than one conversation with Mr. Coddling about it?

A. That I could not say. It ran along during that period and I could not say whether I had one or two, or a dozen.

Q. What led up to that conversation you had with the Gilmores, over there in San Rafael?

A. What is that?

Q. What led up to this talk you had with the Gilmores over in San Rafael?

A. He had some talk with Mr. Coddling.

Q. How do you know that?

A. Well, according to the way he had told me.

Q. That is all you know, what Mr. Gilmore told you about it, and not what you told Coddling?

A. Mr. Coddling and myself talked about it.

Q. You do not know how many times you talked about it? A. I could not tell you that.

Mr. BELL.—Q. You never had any accident before that led you to think that these people were not competent? A. No, sir.

Q. That is just your private opinion? [124]

A. No, from their own opinion.

Q. You mean to say that Mr. Gilmore himself thought that he was not competent?

A. The barge was too big for him. Many a time he would leave the barge up there and go back with the towboat.

(Testimony of J. M. O'Brien.)

Mr. HUTTON.—Q. What is the “Golden Eagle” used for?

A. Why, she was towing barges around there, towing our barges. They had, I think, three other barges besides that one at that time. I don’t know just exactly how many, but they had a couple more.

Mr. HUTTON.—I think that is all.

**[Testimony of G. C. Coddington, for Libellant.]**

G. C. CODDINGTON, called, sworn and examined as a witness on behalf of libellant.

Direct Examination.

Mr. HUTTON.—Q. You are connected with the Halvorsen Transportation Company, are you not?

A. Yes.

Q. And in what capacity?

A. I was a stockholder in the company.

Q. Were you president or secretary, or something, also?      A. Secretary of the company.

Q. You were not actively engaged in this freight carrying business, that is, personally you were not?

A. No, sir.

Q. Your business was uptown in some other business?      A. Yes.

Q. Can you remember who the stockholders of the Halvorsen Transportation Company were on December 31, 1913?      A. I think I can.

Q. Sir?      A. I think I could give them to you.

Q. Give us your best recollection.

Mr. LILLICK.—We object to that on the ground that it is not the best evidence. I do not want to

(Testimony of G. C. Coddington.)

make any technical objections, but we will let you see the books and will stipulate that the stockholders of the Halvorsen Transportation Company as shown by [125] those books, which you may see later, were the stockholders at the time of this loss.

Mr. HUTTON.—He says he can remember them.

Mr. LILLICK.—Q. Can you remember them?

A. I could not be sure that I know all of them.

Mr. LILLICK.—I do not care to be bound by Mr. Coddington's testimony when he is speaking from his recollection. We will give you the books.

Mr. HUTTON.—That is all, Mr. Coddington. We rest.

Mr. LILLICK.—We will have Mr. Coddington as our first witness.

Q. You heard the testimony of Mr. O'Brien here about the conversation he said he had with you regarding the competency of the Gilmores—you heard Mr. O'Brien's testimony in that particular?

A. Yes.

Q. Do you know anything about Mr. Gilmore with regard to his competency in the handling of a boat?

A. I visited San Rafael occasionally and had a conversation with Mr. O'Brien in regard to the Gilmores, and Mr. O'Brien complained of the manner in which the captain of the boat was handling the the business. His main objection was the manner in which he attended to loading and unloading, that he would not follow Mr. O'Brien's directions. He made a great many objections to us on the conduct of the affairs of the company at that end.

(Testimony of G. C. Coddington.)

Q. Did you hear anything at all about Captain Gilmore's competency as a navigator?

A. I do not recollect that question came up at all. I am satisfied—I never questioned his competency as a navigator, or heard it questioned.

Q. You never heard his competency as a navigator questioned? A. Not as a navigator; no, sir.

Q. The objections that came from Mr. O'Brien were objections as [126] to what was done about loading and unloading the barges?

A. Yes, unloading and loading them. He was the superintendent there, and the men were somewhat insubordinate, did not always follow his directions, and he thought they ought to. In other words, he thought we did not get as good service as we might.

Q. Did you ever hear anything about the barge being too big a barge for the launch that had been provided by the Gilmores to tow it?

A. I do not remember positively of any conversation in regard to it. We would have preferred to have a stronger tugboat at times of very severe winds, but it was very difficult and impossible to get any boat to do better than that, because the draft there, or the channel, is very shallow, and you could not use the "Golden Eagle" in San Rafael Creek. That was the best boat we could use. We concluded right along we had the best tow available for that purpose.

Q. In the agreement that the Halvorsen Transpor-

(Testimony of G. C. Coddington.)

tation Company had with the Gilmores, which is in evidence here and marked exhibit "A" of defendant Halvorsen Transportation Company, I will ask you whether or not any question ever arose between the Gilmores and yourself about the service they were furnishing for your transportation?

Mr. HUTTON.—I do not think that is material. It would not be binding upon the libellant.

The COURT.—Objection overruled. Your question again, please?

(Question read.)

A. Well, I did not take the matter up—I did not take up a matter of that kind personally at all with the Gilmores. I never took the matter up at all. I discussed the matter with my brother, who was superintending the business at this end, and Mr. O'Brien, as I said, objected because they did not follow his [127] instructions about loading and unloading at certain hours, that sometimes they would not carry out the instructions of Mr. O'Brien, or my brother, at this end.

Mr. LILLICK.—Q. My question was whether or not any question ever arose between you and the Gilmores as to the efficiency of this launch they were using? A. No, sir.

Mr. LILLICK.—That is all.

Mr. HUTTON.—Q. You are not Mr. George R. Coddington, are you? A. George C. Coddington.

Q. Your brother is George R.? A. C. R.

Q. He was the man that had the actual charge of the business at this end, was he not?



(Testimony of G. C. Coddington.)

A. At that time, in December—during that period?

Q. At that time.

A. Oh, no, we had a number of superintendents. Mr. H. C. Halvorsen had charge for a number of months before that.

Q. When did your brother take charge?

A. My brother took charge during September, I think, or October first. He had charge for several months.

Q. How long did he continue in charge?

A. He continued in charge from that time on down through all of this period.

Q. He was in charge, then, during December, 1913? A. He was in charge at San Francisco.

Q. Was he one of the officers of the Halvorsen Transportation Company? A. A director.

Q. Did he hold any other office? A. I think not.

Q. He was superintendent, was he, at this end?

A. Well, he supervised the work, you might say.

Q. He was superintendent of the dock at this end?

A. Well, that wasn't his title, but he assumed duties—

Q. What did he do down on the dock?

A. Well, he watched the [128] incoming and outgoing of the boat—he was crippled at that time and walked on crutches.

Q. Did you have anybody in charge of your business down there at that time? A. He had charge.

Q. He was in charge?



(Testimony of G. C. Coddington.)

A. He was in charge, but I do not know just what title he had.

Mr. BELL.—Q. What is the horse-power of the “Golden Eagle”?

A. Eighty, as I have always been informed.

Q. Do you know what her draft is?

A. Well, I understood it was five or six feet, but I wouldn't testify positively.

Mr. BELL.—That is all.

Mr. LILLICK.—We offer in evidence the deposition of Charles R. Coddington. It is six pages long, and I should like to read it, if we are going to argue this case early this afternoon.

(Deposition of Charles R. Coddington read.)

Mr. LILLICK.—I would like to state that yesterday or the day before Mr. Coddington went to San Rafael and learned that Mr. Martin had realized \$108 from the sale of this wheat, and a San Francisco draft was sent to Mr. Cheda for that \$108. If any money has been turned in to the Halvorsen Transportation Company for the sale of wheat, it will be sent to Mr. Cheda.

Mr. HUTTON.—Our contention is that there was no right to sell the wheat at all. They had no right to offer that as a tender.

Mr. LILLICK.—I want the Court to understand that my clients are not trying to take that money that was realized from that wheat. We are standing upon our defense.

(Testimony of Thomas Crowley.)

Mr. HUTTON.—The tender payment has nothing to do with it.

Mr. LILLICK.—There is nothing before the Court. I do not claim that is a tender at all. [129]

**Testimony of Thomas Crowley [for Defendant.]**

Testimony of THOMAS CROWLEY, called, sworn and examined as a witness on behalf of defendant Halvorsen Transportation Company.

**Direct Examination.**

Mr. BELL.—Q. What is your occupation?

A. Manager of the Crowley Launch and Tugboat Company.

Q. How long have you been engaged in that business?      A. Twenty years.

Q. In the Bay of San Francisco here?      A. Yes.

Q. How many boats have you, Mr. Crowley?

A. Over fifty.

Q. How many did you have in December of 1913?

A. Nearly the same number.

Q. Do you recollect, Mr. Crowley, the 31st day of December, 1913, as to what the weather was in the morning at about eight o'clock?

A. Yes. I was in my office at eight o'clock.

Q. How was the weather?

A. It had been blowing a little, nothing to speak of, just an ordinary breeze at that time.

Q. On that day did you go out on the Bay yourself, Mr. Crowley?      A. Yes.

Q. What were the circumstances under which you went out?

(Testimony of Thomas Crowley.)

A. At about eleven o'clock I received a phone message from Fort Baker, from one of the crew of the schooner "Albion," that had been laying there with a load of coal at Fort Baker wharf, and he said it has been blowing during the night and that they did not want to stay there any longer, because it did not look as though it was going to get any better, and they did not think they could get away with the balance of their cargo. So I really did not like to see them come back without finishing the discharge of their cargo, so I took a boat and went over there; I left about eleven o'clock and on the way down I signalled our office [130] at the Exposition Grounds. It was raining, kind of misty, and I could not see across by the time I got over there, which I think was around twelve o'clock. The schooner was on the beach. It began to blow about eleven o'clock just about the time I was leaving. It commenced to blow, and it blew pretty hard, and the schooner was on the beach. She had two anchors out and her mooring lines—she had parted all lines, and she slipped both anchors. We had a piece of six by eight, and made a heavy line and cast it to her, floated it in. One of the crew of the schooner went out in the water to his waist and got the log and passed line through her hawser.

Q. At eight o'clock that morning, in your opinion of the weather conditions, was it proper to start out from San Francisco for San Rafael with a vessel such as the "Seven Bells," towing a barge sixty-eight by thirty-eight feet?

(Testimony of Thomas Crowley.)

Mr. HUTTON.—I object to that on the ground that no foundation has been laid.

The COURT.—Objection overruled.

A. If it was my boat I would have sent her out on that journey.

Mr. BELL.—Q. Had you, Mr. Crowley, had any experience at that time in towing to San Rafael?

A. Yes, we towed there frequently.

Q. What is the nature of San Rafael Creek with reference to navigation?

A. Well, it is shallow and there is a flat out in front of the creek.

Q. Can you get into that creek at low tide?

A. Not unless you have a mighty shallow draft boat.

Q. Do you know the launch “Seven Bells”?

A. Yes.

Q. Did you know her at that time?      A. Yes.

Q. Do you know the Halvorsen Transportation Company barge that [131] was towed back and forth between San Francisco and San Rafael?

A. Yes, I know the barge that has the house on it.

Q. What would you say, Mr. Crowley, as to the efficiency of the launch “Seven Bells” for the purpose of towing that barge from San Francisco to San Rafael?

A. Well, she was a boat that was quite capable of handling that barge between San Rafael and San Francisco.

Q. Was she capable of handling that barge in all

(Testimony of Thomas Crowley.)

usual weather to be expected on the bay?

A. Well, sometimes we have pretty heavy winds, and it is not the best policy in the country to start out, no matter what kind of a boat you have got. Take our business, we do not go unless conditions are favorable, so I would say that that boat, everything considered, would be amply big enough and capable to handle that barge under any ordinary conditions.

The COURT.—If they started out right. I want to get your idea exactly. You hesitated in your answer, whether it was a boat that could handle the barge in weather that might ordinarily be expected.

A. You could not use a bigger boat.

Q. You could have used a smaller barge?

A. Not very well. That barge is what we consider a very small barge. It was a small barge. It is not more than a little over a hundred tons, or a hundred and fifty.

Q. What do you say as to the competency of the "Seven Bells" to handle it?

A. I say she was capable of handling that barge on that run.

Q. What happened on this day in question here?

A. Well, there was an unusually heavy blow; it was squally. It came on suddenly. It put a schooner on the beach at Fort Baker. We were on the [132] lee shore and we could not hold her during the blow when she went on, if we had been there.

Mr. BELL.—Q. Do you know Captain Gilmore, of

(Testimony of Thomas Crowley.)

the "Seven Bells"?      A. Yes.

Q. Do you own any barges yourself?      A. Yes.

Q. How many?      A. About thirty.

Q. What would you say as to the size of this barge, is it large or small?

A. I would call it a small barge.

Q. Such a barge as this, what power boat are you accustomed to send out with such a barge, yourself?

Mr. HUTTON.—I do not think that is material, unless it is exactly the same, or in the same condition.

The COURT.—Objection overruled.

A. Well, I did some business with that company and I sent out about the same sized boat on the job, the same engine.

Mr. BELL.—Q. Is it possible to get into San Rafael Creek with a boat of heavier draft than the "Seven Bells"?

A. You can get in at high tide once in a while, but the most practical boat would be a boat of the draft of the "Seven Bells."

Mr. LILLICK.—Q. Would you that morning, had you yourself been running the "Seven Bells," deem it, in your judgment, a proper thing to do to start out with the weather in the condition it was that morning, December 31st?

Mr. HUTTON.—Same objection. It is purely a question of law.

The COURT.—Objection overruled.

Mr. LILLICK.—Q. With a barge of that size that



(Testimony of Thomas Crowley.)

was used that morning?

A. Yes, I would have sent her out.

Mr. LILLICK.—That is all.

Mr. HUTTON.—Q. How much water did the  
“Seven Bells” draw?

A. She drew about four feet. [133]

Q. The draft of water hasn’t anything to do with  
the horse-power of a boat?

A. The draft of water hasn’t what?

Q. I say the draft of water of a boat hasn’t any-  
thing to do with its horse-power?

A. The draft of water helps.

Q. There are such things as gasoline boats of four  
foot draft that are seventy-five or eighty horse-  
power? A. No, sir.

Q. How do you know?

A. Well, because you have a certain size wheel  
and of course the bigger the engine the more draft  
the boat must have.

Q. Suppose you put the same size wheel and turn  
it up faster, you get more horse-power?

A. Not for towing.

Q. Have you ever tried to do that and see whether  
the speed of the engine does not cut some figure in  
the power development?

A. It is not practical, What you want is a big  
wheel, large in diameter, and turn it slowly, and  
then you get good results in towing.

Q. Isn’t it possible to get it another way? Let  
me ask you this question: Isn’t it possible to get it

(Testimony of Thomas Crowley.)

another way in a light draught boat, by putting on a small wheel and turn it up faster? Do you lose efficiency in your engine by doing that?

A. The engine would be turning so fast that it would soon rack itself to pieces.

Q. It would have to run a thousand turns a minute to run so fast as to lose its horse-power, wouldn't it?

A. What do you mean by "lose its horse-power"?

Q. At what speed would it turn so fast that it would lose its power?

A. If you started to take a seventy-five horse-power engine and put on a smaller wheel, and turn it up faster, why, you would have trouble with your engine—your engine would be turning over too fast. Now, this forty horse-power engine [134] that was in this "Seven Bells" does not turn at a speed of over three hundred and fifty or four hundred revolutions a minute, say, now, if you would get it going up higher than that, why, you would have trouble with your engine, and you would not get very far with it.

Q. There are some engines that turn faster than that?

A. Not these engines here. That is the reason why these California engines, such as these local men make here, are more successful, because they are slower turning engines.

Q. Haven't you seen gasoline engines around on the Bay here that develop horse-power as high as a hundred or a hundred and fifty?

(Testimony of Thomas Crowley.)

A. Well, they may be for speed purposes, but not for towing.

Q. Haven't you seen such boats?      A. Yes.

Q. Are you a mechanical engineer?      A. No, sir.

Q. Have you ever studied the effect of the velocity of the propeller on the number of turns it makes, with reference to the power it developed?

A. No, sir. That is outside of my practical experience.

Q. Are there not many light draft boats in San Francisco, gasoline boats, that do not draw over four feet of water, that develop much more than fifty horse-power?

A. There may be a dozen boats of that kind that have a flat stern for shallow water work, or something of that sort.

Q. Do you send out boats on trips as far as from San Francisco to San Rafael when the storm signals are flying?

A. I wouldn't pay any attention to the storm signals.

Q. You would not pay any attention to them? Why not?

A. No, because they may put the storm signal up and the blow may not come for forty-eight hours after. You could not engage in business if you go along depending on those storm signals. [135]

Q. You would take the chance whether it came within a few minutes or twenty-four hours?

A. I would take the chance on our experience, from knowing the weather conditions ourselves. I

(Testimony of Thomas Crowley.)

would take chances on my judgment in preference to those of the storm signals.

Q. You would pay more attention to your own judgment than you would to the storm signals?

A. In this way; if the storm signals were set, and the weather looked threatening or bad, I might hold off, but if the storm signals were set, and the weather did not look bad, why, I would go.

Q. Do you call twenty-two miles an average wind, twenty-two or twenty-three miles?

A. I would call it a breeze, that is all.

Q. A strong breeze?

A. Just a strong breeze, that is all.

Q. Do you know how large the house is on the Halvorsen Transportation Company's barge?

A. How high it is?

Q. How large the house is.

A. I should say it was about nine or ten feet high.

Q. You got that from the testimony of a witness on the stand here?

A. No. I think that witness testified that it was a little low. He said eight feet.

Q. Your barges as a rule have no houses on them?

A. Yes, we have houses on our barges.

Q. How many?      A. One.

Q. Do you use them constantly?

A. Frequently every day, now.

Q. A barge with a house on it is a much harder boat than one without a house on it, in the wind?

A. Oh, naturally it catches the wind.

Mr. HUTTON.—I think that is all. [136]

(Testimony of Thomas Crowley.)

Mr. BELL.—Q. In a storm such as occurred on the 31st of December, 1913, what would be the condition with reference to navigation in the shallows just off the mouth of San Rafael Creek?

A. Well, if you got into that shallow water with a boat you would not get the same efficiency that you would in deep water.

Q. Why is that, Mr. Crowley?

A. Well, being so close to the bottom. That is, you would be hitting the mud occasionally, and you do not get the efficiency when you get so close to the bottom as you would in deep water.

Q. What effect does the striking of the mud have on the steering of the vessel, if any?

A. Well, it depends on how hard you strike it. You might sheer from one side to another, by striking it.

Mr. BELL.—That is all.

Mr. HUTTON.—Q. Mr. Crowley, an experienced navigator under those circumstances would try to get away from the shallow water, would he not, and would it not be proper navigation to keep over on the other side of the channel, and keep in the deep water?

A. No, sir. He could have gone around McNear Point or Petaluma Flats.

Q. You think the proper thing to do would be to go over into danger?

A. No, I don't think that would be going into danger.

Q. And if that boat was not able to handle the barge, would that indicate to your mind that it did

(Testimony of Thomas Crowley.)

not have the capacity to handle her?

A. That boat would have handled that barge, except under the conditions as they existed at that time. It came on in mighty hard squalls.

Q. Doesn't it always blow that way in San Francisco?

A. No, sir. I remember that particular day as being a mighty [137] hard blow.

Q. Did you ever know of its blowing any different in the winter-time in San Francisco except in squalls?

A. Yes, I have known it to blow steady.

Q. When?

A. All the time. That morning that schooner lost her anchors and went on the beach. That is an unusual occasion.

Q. Do you remember that particular morning?

A. Yes, because I was there myself.

Q. Do you remember how the weather was on the 29th of December, 1913?

A. Well, it had been blowing previous, the day previous. This was on December 31st. On the 30th it had been blowing. I don't really know how it was on the 29th.

Q. How long had the weather been bad at that time?

A. It had been, off and on, bad for two or three days.

Q. How many days? A. Two or three.

Q. And the fact that it continued so long would indicate to your mind, would it not, that it was going



(Testimony of Thomas Crowley.)

to continue until it cleared up finally?

A. No, sir.

Mr. HUTTON.—That is all.

The COURT.—Q. You say, Mr. Crowley, that when you get into shallow water that reduces the efficiency of your tug? A. Yes.

Q. It seems to me that the policy would be to keep in the deeper water and retain the efficiency of your tug?

A. Under ordinary conditions, if he had stayed in deep water he would have got into worse water, that is, in the particular location he was in.

Q. He could always cast off?

A. Well, he would have got out in there in front of McNear's Point, or one of those places in there and he could not have held his vessel at all. [138]

Q. What do you mean by "his vessel"?

A. His barge.

Q. He did not hold his barge. That is what this suit is about. He cast off the barge. He could always have cast it off?

A. He started off here with the barge in tow. He was bound for San Rafael.

Q. And he was bound to exercise all due care to land her at San Rafael?

A. He did the proper thing by trying to get into San Rafael. I saw where he went ashore.

Q. I cannot understand why in a stormy weather a tug loses its efficiency by going into shallow water.

A. It was high water around from eleven to twelve o'clock. He had his barge in tow, at high water, and

(Testimony of Thomas Crowley.)

the proper thing to do was to try and go right over to San Rafael, but when he gets on these flats, and these squalls come, then he loses his efficiency, some of the efficiency, from his being in shallow water, and it might render him powerless, whereas, if he went out into deep water, and met these same squalls, he never had a chance at all.

Q. A chance for what? He would always have a chance to cast off?

A. Well, really, by getting in on the flats with his boat and his barge, if he did get into bad water, she might go up on the mud flats—she might go up on the shore, and she really wouldn't do any damage, or she might go out a little beyond the mud and get on the rocks.

Mr. HUTTON.—Q. The fact that he could not pull out into deep water, would that indicate to your mind that the boat was not of sufficient capacity to handle that barge?

A. The fact that he could not pull out into deep water?

Q. Suppose the towboat tried to pull the barge out into deep water, and she was unable to do it, would that indicate to your [139] mind that the towboat was not of sufficient capacity to handle the barge?

A. He could have gone out into deep water.

Q. Suppose he tried to and could not, would you say then that the towboat was not strong enough?

A. Well, in a gale or in a squall that he got that morning, why, I would not care what boat he had, he

(Testimony of Thomas Crowley.)

was in a bad condition.

Q. According to your theory, then, Mr. Crowley, it did not make any difference how strong a boat or how light a boat this was?     A. No, sir.

Q. How do you know that a strong boat could not have pulled that barge out?

A. Could not have pulled her out where?

Q. Out into deep water.

A. He could have pulled her out into deep water.

Q. Well, suppose a condition arose, Mr. Crowley, such that indicated to a man who was navigating a boat that it was the proper thing to do to get into deep water, and he tried to get into deep water and could not get into deep water, on account of the insufficient capacity of the boat, would that indicate to your mind that the boat was not strong enough?

A. No. He might get out of the channel and get into mud, or something of that sort.

Q. Well, suppose that was all past and gone, and that he got up opposite some of those mud flats and then tried to go out into deep water, tried to pull the barge out into deep water, and he could not do it, would you say then that the boat was strong enough to pull that barge?

A. The towboat was strong enough to pull that barge under any ordinary conditions, except those particular squalls or heavy winds that morning.

Q. Do you consider it a proper thing, then, for a towboat man to send a boat out to tow a barge that can only handle herself [140] in smooth water?

A. We do not take towboats out and try to do any-

(Testimony of Thomas Crowley.)

thing with them except under favorable conditions, and when there are heavy winds we do not handle them at all.

Q. Do I understand by that answer that it is up to the towboat man to know the conditions of the weather, the currents, the channels and the tides and everything relating to the handling of towboats?

A. Yes. Naturally he can tell what is going to happen.

Q. Still you say you would take a chance on a morning like that?

A. A man has to take a chance.

Mr. HUTTON.—That is all.

Mr. BELL.—Referring to the map which was used the other day, I would like to introduce this map as Libellant's Exhibit "A." It was not formally introduced the other day. I would like to ask Mr. Crowley to step up to this map, Libellant's Exhibit "A." Suppose that on the morning of the 31st of December, 1913, the launch "Seven Bells" had left San Francisco with the Halvorsen Transportation Company barge in tow, and that it had proceeded along without difficulty until they got off of California Point; about that time a heavy wind came up and after they had gone some distance beyond California Point, toward San Quentin Point, what under those circumstances do you think would have been the proper thing for the navigator to do—what should he have done?

A. He should have kept on his way, going into the creek.

(Testimony of Thomas Crowley.)

Q. If he kept on his way going into the creek, and in the vicinity of the mouth of the creek he found that he was then unable to go into the creek, and feared that the barge would be blown upon the rocks, what would then have been the proper maneuver for him to make?     A. If he done what?

Q. If he had gone in almost to the mouth of the creek and he then found that it was impossible to go into the creek, as the wind [141] would have blown the barge which was being towed, on to the shore, even if the launch got into the creek, what would have then been his proper maneuver, he not being able to get into the creek?

A. Well, that is rather hard to say. If he was in a position about in here, he would have the rocks over here to look out for.

Q. Assuming the wind at that time to be coming from the southeast, and blowing strong, would you say it was expedient to attempt to turn the combination around and tow it out into deep water again?

A. If it was bad weather how could he get out into deep water?

The COURT.—I have always understood that sea-going crafts were safe in deep water.

A. He could have got into the lee of the island here. If he had gotten out here, he would have gotten into just about as bad a trap.

Mr. BELL.—Q. Do you know the depth of the water around those islands there?

A. No. It is a little shallower there. He could have gone around in the lee and kept away from the



(Testimony of Thomas Crowley.)

rocks. Here are the rocks there. I would have put her on the mud somewhere where she wouldn't have done any damage. He might have got near the islands here.

Q. He might have beached her?

A. Beached her there somewhere.

Mr. BELL.—That is all.

Mr. HUTTON.—Q. A south wind there, it would be sheltered over here?

A. No, it wouldn't be sheltered there.

Q. It would be sheltered in here?

A. In here. There is Point San Pablo.

Mr. BELL.—Q. You are speaking now of Point San Pablo?

A. It is pretty shallow, though, in here, but he could have gotten some shelter over here.

Mr. HUTTON.—Q. Don't you think the proper thing for the [142] captain to have done was to try and get across here into deep water?

A. I wouldn't have tried to go over to Point San Pablo. I would have gone to McNear's Point.

Q. A man making a tow of that kind, in a heavy wind ought he to be able to determine whether he could make that point or not?

A. He could not determine that. The best thing he could do would be to try, when he is coming along in here with a southeast wind, and in those heavy squalls, the best thing he can do is to try. It is a dangerous crossing—

Q. He did try.

A. He could not make it. The best place for him



(Testimony of Thomas Crowley.)

would be right in here and stay in there. He could have got in the lee of the island here, or *he have* gone on the beach here, or he should have gone there.

Mr. HUTTON.—I think that is all.

Mr. LILLICK.—Q. Was it good seamanship, in your opinion, and speaking from your experience, to have gone on this crossing up here where there were mud banks, and rocks over here, upon the assumption that the barge would have gone over on the mud bank?

A. Well, I would have thought the barge could have been placed on the mud bank here, or gone on the mud bank in some way.

Q. In your opinion would that have been the proper thing for a man to have done under similar circumstances, where there were rocks on the shore, to save the barge by slipping his tow line and allowing her to go up on the mud bank?

A. Yes, I would have said that was all right.

Mr. HUTTON.—Q. What is going to become of the cargo under those conditions? Would not the sea wash over it? A. No, sir.

Q. In this particular case it did. Can you ever tell just exactly how she is going to land on the beach?

A. Well, that is the idea. You cannot always tell. The barge may [143] sheer off.

Q. Do you own any stock in the Standard Gas Engine Company? A. I own no stock in it.

Q. Are you interested in it in any way?

A. No way, shape or form.

(Testimony of Thomas Crowley.)

Q. Never was?      A. Never was.

Q. Is your concern merely a tugboat company?

A. No, sir.

Q. Do you buy gas engines, or use them?

A. We buy lots of them and pay cash for them.

Mr. BELL.—Q. Are you interested in the Halvorsen Transportation Company, or in the “Seven Bells”?      A. No, sir.

Mr. BELL.—That is all.

**Testimony of Alexander McLaughlin [for Defendant.]**

Testimony of ALEXANDER McLAUGHLIN, called, sworn and examined as a witness on behalf of defendant, Halvorsen Transportation Company.

Direct Examination.

Mr. BELL.—Q. What is your business?

A. Captain of the schooner “Belvedere.”

Q. What was your occupation in December, 1913?

A. I was captain of the “John A. Britton,” at McNear’s Point.

Q. Do you recollect where you were on the morning of December 31, 1913?

A. On the “Seven Bells.”

Q. Your boat?

A. My boat. I was down at Third and Channel streets.

Q. What time did you leave there?

A. I left there about half past eight.

Q. What size was that boat, the “John A. Britton”?

A. The “John A. Britton” is a fifty horse-power,

(Testimony of Alexander McLaughlin.)

fifty-four feet long, fifty-two or fifty-four, by eleven or twelve feet deep. [144]

Q. What, if anything, were you towing, Mr. McLaughlin? A. I was towing a barge.

Q. What was the size of the barge?

A. The barge was about fifty-four feet long and thirty feet wide.

Q. Where were you bound for with her?

A. I was bound for McNear's brickyard.

Q. Where is McNear's brickyard?

A. It is on the Marin shore.

Q. Can you indicate upon this map about the location of that brickyard? Here is San Rafael.

The COURT.—Q. It is beyond San Rafael?

A. Yes. This is McNear's Point right here. The brickyard would be right about in here.

Mr. BELL.—Q. What point on the shore? Indicate with your pencil on the shore about where it is.

A. It is right here. Right about in here.

Q. Mark that point with "X."

(The witness marks map as requested.)

Q. What time did you start that morning?

A. I left Third and Channel streets about half past eight.

Q. What was the condition of the weather at that time?

A. At that time the weather was favorable.

Q. What was the condition of the Bay?

A. Well, it was quite calm—it wasn't very rough.

Q. Now, what course did you take after you left Channel street?

(Testimony of Alexander McLaughlin.)

A. I just came along down the front to Lombard street, took a northwest course and crossed from Lombard street.

Q. Directly for McNear's Point?

A. Directly for McNear's Point, yes.

Q. Now, will you describe what occurred on that voyage over there, Mr. McLaughlin?

A. Well, on my way over there was nothing in [145] sight and I kept on going. The weather was nice for about an hour and a half. I got over on the other side of Angel Island, and I saw the "Seven Bells" and a barge quite a way off, so I kept on going and so soon as I got past the straits there up came a little blow, and then in a little while it started in to be squally, and when I was off of California City, at that time, about two miles off of California City—

Q. At what time was that?

A. That would be about half-past eleven, or quarter to twelve.

Q. How was the weather at that time?

A. Well, just beginning to blow a little bit.

Q. What occurred after that?

A. In about a half an hour or so it started to be squally and my tow-line caught it.

Q. What size tow-line did you have?

A. I had a five-inch tow-line.

Q. How many lines between your barge and the launch?      A. Just the one.

Q. What did you do then?

A. Well, I just simply swung around and tried to get back and get another line or the tow again. I

(Testimony of Alexander McLaughlin.)

managed to get the line on it again and it wasn't more than ten or fifteen minutes when she parted again.

Q. Was there anyone on the launch with you?

A. Yes, I had a deckhand, and when she parted the second time my man was washed overboard.

Q. Off the launch?

A. Off the launch. I stopped to pick up my man, and just as I picked him up she parted again. I managed to get the barge and save it from going with the sea and wind. It was raining so much I never saw any more of the "Seven Bells," or never heard anything of it, until that afternoon late when I got around into the brickyard. [146]

Q. Where did you finally land up with your launch?

A. I landed over on the northeast side of McNear's Point, around by the Chinese camp.

Q. Is that where you intended to land?

A. Yes.

Q. What did you do when you got over there?

A. I dropped my hook.

Q. You mean your anchor? A. Yes.

Q. How did you anchor the barge?

A. With a cable anchor.

Q. How heavy an anchor was that?

A. I judge the anchor weighed about two hundred pounds.

Q. What happened to the barge after that?

A. Well, the wind and tide just simply dragged her

(Testimony of Alexander McLaughlin.)

close to the shore on the mud banks and she couldn't go no further.

Q. Why was it you were not able to make the brickyard?

A. Well, being that the sea and wind was too strong for me. I could not take any chances, or I would have landed where the "Seven Bells" landed.

Q. Where was the "Seven Bells" at the time you saw her?

A. I should judge about two miles away from me, off to the westward.

Q. Toward the Marin shore from you?      A. Yes.

Q. How far was she from California Point?

A. Well, that I could not judge—about a mile, it being raining so hard by that time you couldn't see very much—you couldn't see anything.

Q. How did this squall which you have described compare with the winds which you usually encounter on the Bay?

A. It was the worst I have ever seen since I have been up that way.

Q. How long have you been on and about the bay?

A. I have been on the Bay for the last seven or eight years.

Q. In your judgment, taking into consideration the position of the [147] "Seven Bells" at the time you saw her, and the condition of the wind, and what happened to you yourself, was it possible for the "Seven Bells" to make it around McNear's Point as you did?



(Testimony of Alexander McLaughlin.)

A. I don't believe they could. They were too far inshore.

Q. What, in your estimation, Mr. McLaughlin, was the proper thing for the "Seven Bells" to have done when that squall came up, she being in the position that you saw her?

A. Well, put the hook and chain down and try to hang on if they could.

Q. What do you think the probabilities would have been if they had put the anchor out at the time when the squall first came up?

A. Being that the mud is so soft there I do not believe that the anchor would hold in soft mud, with a barge that had a house on it.

Q. Do you think then, that such action would have done any good?      A. I hardly think it would.

Q. What do you say as to the propriety of their continuing from the point *when* you saw them when that squall arose, for San Rafael Creek?

A. Well, being that this is shallow water over that way I don't know as they could get in there with the wind and sea going as it was.

Q. Could they have turned back and got shelter any place?      A. I do not believe they could.

Q. What, in your judgment, was the best thing they should have done under the circumstances?

A. The best thing for them to do was to have their hook and chain out and let her ride it.

Q. And drop the barge?

A. Leave the barge, yes.

(Testimony of Alexander McLaughlin.)

The COURT.—Q. Where?

A. Well, on the Marin shore there.

Q. At what stage of the process?

A. Well, just when it was blowing there, why, they could not do anything with it. The wind was blowing so hard that it was blowing the barge towards [148] the shore all the time. If they put their hook out they would kind of check it a little bit.

Q. Where would they put the hook out?

A. When they saw they could not do anything with it. They had flats around them there.

Mr. BELL.—Q. What do you think their chances were of getting into San Rafael Creek with the barge?

A. I do not think the barge could have made it on that day.

Q. What would have happened to them?

A. It is all shore in there and I think if they had went in there with their tugboat, the tugboat would have a chance to sink on the mud and the barge would be thrown up on the rocks in the mouth of the creek.

Q. Then if they could not get into San Rafael Creek what was the proper expedient of navigation for them to adopt?

A. I think leave the hook down and hang on.

Q. What do you think the success of that would have been?

A. They probably might have checked her, kept her from going any further, stay there and ride the sea for a while.

(Testimony of Alexander McLaughlin.)

Q. What effect would the fact that the water was very shallow there have upon that?

A. Well, there is shallow water over there—

Q. What effect would that have upon the scheme which you suggest, of their dropping the anchor and hanging on to the boat?

A. Well, being the way the wind and tide was, it was pretty hard to save anything in that squall.

Q. Do you think it was possible on that day, taking the weather into consideration, and the situation of the "Seven Bells" at the time that squall arose, for her to save that barge?

A. No, I don't think so.

Q. How was your situation different, with reference to their situation?

A. I had the best of it. I was out in the seaway [149] and had the wind and tide behind me. If it not had been for that I would have been blown on to the shore myself. I was two miles further out than they were.

Q. How close did you get to the shore at McNear's Point?

A. Not more than seventy-five or eighty feet.

Q. How was the tide when you were in there?

A. The tide was flooding.

Q. What would you say with reference to the proper time of going into San Rafael Creek, with reference to the tide? A. Just about high water.

Q. Is that the proper time to go into San Rafael Creek? A. Yes.

(Testimony of Alexander McLaughlin.)

Q. How long a run is it from San Francisco to San Rafael Creek?

A. I should judge about three hours.

Q. Did you have any request to go to the aid of the barge from Captain Gilmore?

A. Yes, I did, but I was pretty well disabled myself. My engine-room was full of water and I was short of fuel. I could not do anything. My man was wringing wet, and I was wringing wet myself. We wanted to try and get some dry clothes on us. We could not do anything. I told my boys I was up against it myself, didn't have fuel enough to try to do anything.

Mr. BELL.—That is all.

Mr. HUTTON.—Q. Your barge was light?

A. No, sir; I had five drums of gasoline on it and some other stuff.

Q. How many tons altogether?

A. Well, I should judge about twenty-five or thirty tons.

Q. You had no house on your barge?

A. No, sir.

Q. It was a smaller barge than this other one?

A. A barge about fifty-four feet long.

Q. It is not as large a barge as the Halvorsen barge? [150]

A. Not quite; no, sir.

Q. You were in a better position out in deep water than you would have been if you had been close inshore?

A. Yes.

Q. How long does it take a gasoline boat to go

(Testimony of Alexander McLaughlin.)

from San Francisco to San Rafael, light?

A. I should judge maybe an hour and a half.

Q. On that day, with the wind and tide behind you, don't you think you could make it quicker?

A. Yes.

Q. Could you make it in an hour?

A. No, sir; you could not make it in an hour with a squall behind you like that. You lose some of your power every time the sea hits you.

Q. You would make it in an hour and a half?

A. I could make it in an hour and a half, that is, light.

Mr. HUTTON.—That is all.

Mr. BELL.—Q. Mr. McLaughlin, do you know Mr. Gilmore, the captain of the "Seven Bells"?

A. Yes, I have known him for a short while.

Q. How long have you known him?

A. Well, I have known him for the last two years, or more.

Q. What can you say with reference to Mr. Gilmore's qualifications for running a boat such as the "Seven Bells" and towing barges between San Francisco and San Rafael?

A. Well, I think he is competent to handle the boat and a barge. I know I have met him quite often with the barge back and forth on the Bay and I have never seen anything wrong with him. He has always passed the right signal to me.

Q. Did you ever see any evidence of his not being able to handle a barge?      A. No, sir.

(Testimony of Alexander McLaughlin.)

Q. Did you ever hear any rumors to that effect?

A. No, sir.

Mr. HUTTON.—What he heard would have nothing to do with [151] this matter.

Mr. BELL.—That is all.

Mr. HUTTON.—Q. The only thing you know about him is that you would see him out in the Bay?

A. Yes.

Q. How many times had you seen him up to December 31, 1913?

A. I should judge five or six different times.

Q. How often?

A. Well, I think I must have met him about—I would make the run up there every other day myself, and probably I would meet him two or three times a week.

Q. And he would be a mile or two away from you?

A. Probably he would; sometimes farther than that.

Q. Now, Mr. McLaughlin, there is just one question I forgot to ask you: You are now on the "Belvedere"?      A. Yes.

Q. She has a run to San Rafael?      A. Yes.

Q. How much water does she draw?

A. Why, she draws about three and a half feet.

Q. How many horse-power has she?      A. Fifty.

Q. She used to carry cargo over to San Rafael?

A. Yes.

Q. She is seventy-five horse-power, is she not?

A. No, sir, she is not.



(Testimony of Alexander McLaughlin.)

Q. Are you sure of that?     A. I am sure.

Q. What size are her cylinders?

A. Her cylinders, I think, are eight and a half.

Q. She is engaged in the towing business?

A. Not that I know of. I don't know that she has ever towed any barges. I have never towed with her. [152]

**Testimony of Alvin Doe [for Defendant.]**

Testimony of ALVIN DOE, called, sworn and examined as a witness on behalf of Halvorsen Transportation Company.

**Direct Examination.**

Mr. BELL.—Q. What is your occupation?

A. At present, manager of the San Rafael Express.

Q. What was your occupation in December, 1913?

A. Captain of the gasoline schooner "President."

Q. How large a boat is that?

A. Fifty horse-power.

Q. What were you engaged in doing in December, with that boat?

A. We were hauling freight between Sausalito and San Francisco mostly.

Q. Where were you on the morning of December 31, 1913, if you know?

A. We made a trip from San Francisco to Sausalito.

Q. What time did you start out?

A. About half past eight.

(Testimony of Alvin Doe.)

Q. What was the condition of the weather at that time?

A. There was a brisk wind, not very rough, about a twenty-eight mile breeze.

Q. What would you say with reference to the propriety in starting out in such a breeze as that?

A. Oh, it was good.

Q. Where did you go from San Francisco?

A. From San Francisco to Alcatraz Island and from there to Sausalito.

Q. What was the condition of the weather as you went across?

A. It was good until about half-past nine or ten o'clock, then it got very gusty and windy.

Q. What happened at that time?

A. Our cargo shifted and our engine-room got some water in it and the engine stopped. We had a good many troubles.

Q. How did the wind which you encountered at that time compare [153] with the wind which you usually encounter on the bay?

A. It was very much stronger than usual.

Q. Where were you about the time that struck you?      A. Off Alcatraz Island.

Q. Did you see the "Seven Bells" that day?

A. I saw her for a few minutes just after we were leaving our wharf—after we left our dock.

Q. Did you see her after the wind came up?

A. No, sir; it was before the wind came up.

Q. How suddenly did that wind come up?

(Testimony of Alvin Doe.)

A. All of a sudden, all at once.

Q. How did your boat happen to get water in her?

A. The sea was running heavy, the spray was running high and would hit the side of the boat and would come on board. It went in through the skylight that we always keep open, but we closed them immediately after the sea struck us.

Q. How long did that storm last?

A. About three hours.

Q. Assuming that the "Seven Bells" at the time that squall came up had gone a little beyond the California Point, towards San Quentin Point, was there any place where she could go for safety?

A. Not unless she could tow against the wind and tide.

Q. What do you think as to the probability of that?

A. I don't believe she was strong enough, in fact I am sure she was not.

Q. What do you think with reference to her lines holding in such a storm as that, if she would tow against the wind?

A. I believe her lines would hold if they were of reasonable size.

Q. What do you mean by "reasonable size"?

A. The size that is usually used on such a barge, a five or six inch line. [154]

Q. What would have been the chances of her getting turned around in that wind and sea, with the barge?

A. Oh, that would be easy.

(Testimony of Alvin Doe.)

Q. What would you say with reference to the propriety of her continuing on from there towards San Rafael Creek?

A. I should have continued if I had been there.

Q. If when you got up off the creek, Mr. Doe, and you found it was impossible to enter, what would you then have done?

A. I would try and go out toward deep water.

Q. What course would you take in order to get out?      A. To the southwest.

Q. How would you have gone in order to get out, with reference to Marin Island?

A. I would go out to the south of that.

Q. That is between the island and McNear's Point?

A. Well, it would depend on how the wind and tide were. It is rather shallow in there.

Q. Assuming that the tide was flooding at that time?

A. I would not attempt it because it would take me too near the lee shore.

Q. What would have been the probabilities if you had gone south of Marin Island?

A. There is a chance of that too.

Q. Would you have considered it advisable, if you were unable to get into San Rafael Creek, to attempt to cross between the island and the Marin shore and go around McNear's Point?

A. Around McNear's Point was the nearest safety that there was.

(Testimony of Alvin Doe.)

Q. Would you consider it an error of navigation to attempt to get to McNear's Point in that way?

A. If it were possible to go south it would be better.

Q. What effect does shallow water, for instance, like there is at the mouth of San Rafael Creek, have upon the navigation of a [155] launch?

A. Your propeller is above the water a larger portion of the time, and in case your boat should strike bottom it makes steering difficult. As the stern end touches the mud, or the bottom, the sea will hit the bow, and while the stern is still on the mud, throw the bow around sideways in a direction you do not wish to go.

Q. Look at the map here, Claimant's Exhibit "A," and tell me what the formation is at San Rafael Creek, from this point to this point (indicating)?

A. It is mostly rocks.

Q. That is, on the northerly side of the mouth of that creek it is rocks?      A. Nearly all.

Q. What is it on the other side?

A. It is all mud.

Q. How wide a channel is there in that creek?

A. Eighty or ninety feet.

Q. What, in your estimation, would have happened to the barge if a launch had attempted to take a barge in there, with the wind that was blowing that day?

Mr. HUTTON.—The captain said he made no attempt to go in there. He says his barge swung

(Testimony of Alvin Doe.)

around and he was unable to control it.

The COURT.—Objection overruled.

A. If he had tried to go in there his barge would have struck the rocks on the north shore.

The COURT.—Q. You were down here at California Point when this storm struck you, and you would have done the same thing? Everybody says there was no chance to get in. Then you say having passed there and finding he could not get in, he should have headed for deep water.

A. The experience on this bay shows that no storm of that velocity ever lasts over fifteen or twenty minutes. We usually [156] figure on running out of it in about that length of time.

Q. You are betting on the length of the storm?

A. Betting on our judgment that a storm like that doesn't last very long.

Q. When your judgment fails in that matter, who do you think ought to suffer, who ought to pay for a think like that, the shipper?

A. Oh, no; the captain of the boat.

Q. You think the captain personally ought to suffer?

A. He ought to, but maybe that isn't the law.

Mr. BELL.—That is all.

Mr. HUTTON.—Q. Are you a seafaring man?

A. Yes.

Q. The open sea? A. Not the ocean.

Q. Have you ever been to sea? A. Yes.

Q. Where? A. On the Pacific Coast.

Q. What boats?



(Testimony of Alvin Doe.)

A. On the steamer "Roanoke" and the "Elder."

Q. What position did you occupy on those boats?

A. No position, as a passenger.

Q. What are you now?

A. I am on the steamer "San Rafael."

Q. What are you doing?      A. Captain.

Q. How much water is there in San Rafael Creek at high tide?

A. About as much water as the chart shows, six and a half or six feet—four or four and half feet.

Q. Is it dry at low water?

A. At low tide it is just about dry at the entrance of the creek.

Mr. HUTTON.—I think that is all.

Mr. BELL.—That is all. [157]

**Testimony of A. H. Gilmore [for Defendant].**

Testimony of A. H. GILMORE, called, sworn and examined as a witness on behalf of Halvorsen Transportation Company.

Direct Examination.

Mr. BELL.—Q. Did you hear Mr. O'Brien testify to the effect that you told him that the "Seven Bells" was not capable of handling as large a barge as the Halvorsen barge, and that you wanted a smaller barge; did you hear that testimony?

A. Yes.

Q. You are the captain of the "Seven Bells"?

A. Yes.

Q. You were at this time, in December?

A. Yes.

(Testimony of A. H. Gilmore.)

Q. And you had been during all of the time you were working for the Halvorsen Transportation Company? A. Yes.

Q. Did you ever tell Mr. O'Brien, Mr. Gilmore, that the barge was too big for the "Seven Bells"?

A. I told him in fact—I told him of that fact, yes, sir.

Q. Explain what you mean.

A. I told him for my own benefit in handling it down at Jackson Street, and in those narrow creeks—I told him that just for my own benefit, that is all.

Q. Did you ever tell Mr. O'Brien that the barge was too big for the "Seven Bells" to handle out in the Bay? A. No, sir.

Q. Was she too big for the "Seven Bells" to handle, in your opinion?

A. No, sir; not in my opinion.

Q. What you did tell him was that it was too hard for you to handle in those narrow creeks, because she was so large?

Mr. HUTTON.—I object to that as leading.

Mr. BELL.—I will withdraw the question. That is all.

Mr. HUTTON.—That is all.

Mr. BELL.—That is our case, your Honor.

[Endorsed]: Filed Feb. 25, 1916. W. B. Maling, Clerk. C. W. Calbreath, Deputy Clerk. [158]

*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libellant,

vs.

HALVORSEN TRANSPORTATION CO. et al,  
Respondents.

**(Order to Enter Decree in Favor of Libellant.)**

H. W. HUTTON, Esq., Proctor for Libellant.

O. K. GRAU, Esq., and

IRA S. LILLICK, Esq.,

Proctors for Respondents, other than “Seven Bells.”

G. W. BELL, Esq., and

ANDROS & HENGSTLER, Proctors for Respondent “Seven Bells.”

My conclusion in this case is that while the “Seven Bells” was able to handle the barges in deep water, or on the flats in fair weather, she was *no* sufficient to handle the barge on the flats in rough weather and that therefore the combination of barge and launch were not sufficient for the business in which they were engaged for weather ordinarily to be expected in winter. This is independent of the question as to whether or no the launch should have left the San Francisco side on the morning in question for any other reason.

A decree will be entered in favor of liabelant against the Halvorsen Transportation Company, and

the barge, and against the launch "Seven Bells," and the cause referred to the Commissioner [159] to ascertain and report the amount due.

March 4th, 1915.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed, Mar. 4, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [160]

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*In the District Court of the United States in and for  
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION Co. et al., etc.,  
Respondents and Claimants.

**(Interlocutory Decree.)**

This cause having been heard on the pleadings and proofs, and the arguments and briefs of the respective parties, and due deliberation being had, it is now ordered, adjudged and decreed and this does order, adjudge and decree, that the libelant recover against the respondents and claimants, and the gasoline launch "Seven Bells," her engines and machinery and appurtenances, the amount of the loss sustained by reason of the loss of the goods mentioned and set forth in libelant's libel herein, and that this cause be, and the same hereby is referred to Francis Krull, Esquire, United States Commis-

sioner, to ascertain the amount of such loss and that he report the same to the court, with all convenient speed.

Dated, April 1, 1915.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed, Apr. 1, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [161]

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*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation, J. D. ARKINSON, H. C.  
HALVORSEN, GEORGE W. DORNING,  
A. M. DE VALL, C. R. CODDING, G. C.  
CODDING and P. S. COLBY, a Certain  
Barge, and the Gasoline Launch "SEVEN  
BELLS," Her Engines and Machinery and  
Appurtenances,

Respondents.

**Stipulation (as to Sale of "Seven Bells").**

WHEREAS it is the desire of all parties to the  
above-entitled action that the gasoline launch  
"Seven Bells," together with her engines and  
machinery and appurtenances may be sold at the

earliest date possible, and the proceeds deposited in the above court to abide its further order;

AND WHEREAS said gasoline launch and her engines and machinery and appurtenances have been for a long time past, and now are, lying idle and constantly deteriorating in condition and value;

AND WHEREAS it is the desire of all parties that said gasoline launch and her engines and machinery and appurtenances shall be sold as a unit, and not separately, although the engine is not now in said gasoline launch, but stored in a warehouse;

AND WHEREAS an interlocutory decree has been entered herein in favor of V. J. B. Cheda, the libellant, and whereas this [162] cause is to be referred to the Commissioner of said court to ascertain and report the amount due to said libellant;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between all parties hereto that said gasoline launch and her engines and machinery and appurtenances may be sold as a unit by the United States Marshal for the Northern District of California, in front of the Merchants Exchange Building, on the south side of California Street, between Montgomery and Sansome Streets, on seven (7) days' notice of such sale, to be published for seven days in the "Commercial News" and the "Guide," both newspapers published in the city and county of San Francisco, State of California, and that a *venditioni exponas* issue according; and that the Marshal shall bring the proceeds of such sale into this court and pay the same to the clerk thereof



to abide the further order of this Court in the premises.

Dated March 29, 1915.

H. W. HUTTON,

Proctor for Libelant,

IRA S. LILLICK and

O. K. GRAU,

Proctors for Respondent Halvorsen Transportation Company, J. D. Arkinson et al., and a Certain Barge.

I. F. CHAPMAN,

ANDROS & HENGSTLER,

GOLDEN W. BELL,

Proctors for the Gasoline Launch "Seven Bells,"  
Her Engines and Machinery and Appurtenances.

[Endorsed]: Filed, Apr. 1, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [163]

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*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation et al., etc.,

Respondents.

**Order (for Sale of "Seven Bells").**

WHEREAS all parties to the above-entitled cause have stipulated and agreed that the gasoline launch "Seven Bells" and her engines and machinery and appurtenances may be sold as a unit by the United States Marshal for the Northern District of California, and the proceeds of such sale deposited in this court to abide its further order in the premises;

AND WHEREAS it appears to this Court that it is to the interest of all parties concerned that said gasoline launch and her engines and machinery and appurtenances should be sold without delay;

NOW, THEREFORE, IT IS HEREBY ORDERED that said gasoline launch "Seven Bells" and her engines and machinery and appurtenances be sold as a unit by the United States Marshall for the Northern District of California, in front of the Merchants Exchange Building, on the south side of California Street, between Montgomery and Sansome Streets, on seven (7) days' notice of such sale, to be published for seven days in the "Commercial News" and the "Guide," both newspapers published in the city and county of San Francisco, State of California, and that a [164] *venditioni exponas* issue accordingly; and that the Marshal bring the proceeds of such sale into this court and pay the same to the clerk thereof to abide the further order of this Court in the premises.

Dated April 1, 1915.

M. T. DOOLING,  
Judge of Said Court.

[Endorsed]: Filed, Apr. 1, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [165]

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[**Writ of Venditioni Exponas.**]

United States of America,  
Northern District of California,—ss.

The President of the United States of America, to  
the Marshal of the United States, for the Northern  
District of California, Greeting:

WHEREAS, a Libel was filed in the District Court  
of the United States for the Northern District of  
California, on the 7th day of February, in the year  
of our Lord, one thousand nine hundred and 15.  
V. J. B. Cheda, Libelant, vs. Gasoline Launch  
“Seven Bells,” etc., and praying that the same may  
be condemned and sold to answer the prayer of the  
said libelants. AND, whereas, the said gas. launch  
“Seven Bells” has been attached by the process  
issued out of the said District Court, in pursuance  
of the said Libel, and now in custody by virtue  
thereof, and such proceedings have been thereupon  
had, that by the order, sentence and decree of the  
said Court, in this cause made and pronounced, on  
the 1st day of April, 1915, the said gasoline launch  
“Seven Bells” ordered to be sold by you, the said  
marshal, after giving seven (7) days’ notice of such  
sale, according to law. And that you have the  
moneys arising from such sale, together with this  
writ, at a District Court of the United States, to be  
held for the Northern District of California, at the  
city of San Francisco, on or before the 16th day of

April, 1915, and that you then pay the same to the clerk of the court; THEREFORE, you, the said marshal, are HEREBY COMMANDED to cause the said gasoline launch "Seven Bells" so ordered to be sold, to be sold in manner and form, upon the notice, and at the time and place by law required. And that you have and pay the moneys arising from such sale pursuant to the aforesaid order or decree: [166]

AND HAVE YOU THEN AND THERE THIS WRIT:

WITNESS, the Honorable M. T. DOOLING, Judge of the said court, at the city of San Francisco, in the Northern District of California, this 2d day of April, in the year of our Lord, one thousand nine hundred and fifteen, and of our Independence, the one hundred and 39th.

[Seal]

W. B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

Vessel to be sold as a unit by the U. S. Marshal. Sale to take place in front of Merchants Exchange Bldg., south side of Calif. Street, between Montgomery & Sansome. Notices to be published in "Commercial News" and "Guide." [167]

**[Notice of Sale by U. S. Marshal of Gasoline Launch  
"Seven Bells," etc.]**

Northern District of California.

By virtue of a Writ of *Venditioni Exponas* issued out of the United States District Court for the Northern District of California, on the second day

of April, 1915, notice is hereby given that I will sell by public auction, for cash, on Wednesday, the 14th day of April, 1915, at 11 o'clock A. M., in front of the Merchants Exchange Building, south side of California Street, between Montgomery and Sansome Streets, in the city and county of San Francisco, California, the gasoline launch "Seven Bells," her engines, boilers, machinery, boats, tackle, apparel, appurtenances and furniture as the hull of said gasoline launch "Seven Bells" now lies at the Standard Gas Engine Company's plant in East Oakland, California, and as the 40 horse-power engine of said launch "Seven Bells" now lies at No. 1225 Fifth Street, in the city of Oakland, California. Said hull and engine to be sold as a unit.

J. B. HOLOHAN,  
United States Marshal,  
By Geo. H. Burnham,  
Chief Office Deputy.

ap6td. [168]

**[Affidavit of A. C. Sandahl, Re Publication of Notice  
of Sale of Gasoline Launch "Seven Bells," etc.]**

State of California,

City and County of San Francisco,—ss.

A. C. Sandahl, being first duly sworn, deposes and says:

That he is and was, at the dates hereinafter set forth, a citizen of the United States, over the age of twenty-one years, and a resident of said city and county; that he is not a party to, or interested in, the above-entitled matter, and is competent to be a



witness herein; that he is, and at all times herein mentioned, and during the period covered by said publication, was the foreman of the Commercial News Publishing Company, (a corporation), the printer and publisher of the DAILY COMMERCIAL NEWS, newspaper; and such foreman has charge of all the legal advertisements in said newspaper; that the said DAILY COMMERCIAL NEWS is a newspaper of general circulation, printed and published daily (Sundays and legal holidays excepted) in the city and county of San Francisco, State of California, and was at all times herein mentioned a newspaper of general circulation, as that term is defined by Section 4460 of the Political Code, and, as provided by said section, is published for the dissemination of local and telegraphic news and intelligence of a general character, having a *bona fide* subscription list of paying subscribers, and is not devoted to the interests of, or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment or instruction of such classes, professions, trades, callings, races or denominations; that said newspaper has been published continuously since A. D. 1875; that [169] the publication hereinafter mentioned was set in type not smaller than nonpareil, and was preceeded with words printed in black face type not smaller than nonpareil, describing and expressing in general terms the purport and character of the notice intended to be given; that a sale of the United States Marshall



of which the annexed is a printed copy, has been published in said newspaper, to wit: 8 times embracing between the first publication, made on the 6th day of April, A. D. 1915, and the last publication made on the 14th day of April, A. D. 1915, a period of at least 8 days, and that the dates upon which said notice was published in said newspaper were: April 6, 7, 8, 9, 10, 12, 13, 14, 1915.

A. C. SANDAHL.

Subscribed and sworn to before me this —— day  
of —— 191—.

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Notary Public in and for the City and County of  
San Francisco, State of California. [170]

**[Notice of Sale by U. S. Marshal of Gasoline Launch  
“Seven Bells,” etc.]**

Northern District of California.

By virtue of a Writ of *Venditioni Exponas* issued out of the United States District Court for the Northern District of California, on the 2d day of April, 1915, notice is hereby given that I will sell by public auction, for cash on Wednesday, the fourteenth day of April, 1915, at 11 o'clock A. M., in front of the Merchants Exchange Building, south side of California Street, between Montgomery and Sansome Streets, in the city and county of San Francisco, California, the Gasoline Launch “Seven Bells” her engines, boilers, machinery, boats, tackle, apparel, appurtenances and furniture, as the hull of said Gasoline Launch “Seven Bells” now lies at the Standard Gas Engine Company’s plant in East

Oakland, California, and as the 40 H. P. Engine of said Launch "Seven Bells" now lies at No. 1225 5th street in the city of Oakland, California. Said hull and engine to be sold as a unit.

J. B. HOLOHAN,

United States Marshal.

By Geo. H. Burnham,

Chief Office Deputy. [171]

**[Affidavit of J. W. Empey, Re Notice of Sale of  
Gasoline Launch "Seven Bells, etc.]**

State of California,

County of San Francisco,—ss.

Before me, the *undersign*, a notary, this day personally came J. W. Empey, who, being first duly sworn, according to law, says that he is the secretary of "The Guide," a Marine newspaper published at San Francisco, in said county and State, and that the publication, of which the annexed is a true copy, was published in said paper on the sixth day of April, 1915, and once each day thereafter for eight consecutive days, and that the rate charged therefor is not in excess of the commercial rates charged private individuals, with the usual discounts.

J. W. EMPEY,

Subscribed and sworn to before me this 14 day of April, 1915.

C. W. CALBREATH,

Deputy Clerk U. S. District Court, Northern District  
of California. [172]

**[U. S. Marshal's Return of Sale of Gasoline Launch  
"Seven Bells," etc.]**

In obedience to the above precept, I have sold the gasoline launch "Seven Bells" and such sale amounts to Six Hundred and Eighty-five Dollars, which sum I have paid to the clerk of this court, as I am above commanded.

Dated this 14th day of April, 1915.

J. B. HOLOHAN,

U. S. Marshal.

By Geo. H. Burnham,  
Chief Office Deputy.

[Endorsed]: Filed Apr. 15, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [173]

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**[Petition of Halvorsen Transportation Co., etc. for  
Rehearing.]**

*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. G. B. CHEDA,

Libellant,

vs.

HALVORSEN TRANSPORTATION CO., a Corporation, et al., a Certain Barge and the Gasoline Launch "SEVEN BELLS," Her Engines, Machinery and Appurtenances,

Respondents.

To the Honorable M. T. DOOLING, Judge of the  
District Court of the United States, for the  
Northern District of California:

The petition of Halvorsen Transportation Co., owner and claimant of the barge above named, J. B. Arkison (sued as J. F. Arkinson), H. C. Halvorsen, George W. Dornin, A. M. DeVall, C. H. Coddling, G. C. Coddling and P. S. Colby, respectfully represents to the Court:

I.

That on the 4th day of March, 1915, this Court ordered its decree to be entered in the above-entitled cause in favor of the libelant and against the Halvorsen Transportation Co., and the barge and against the launch "Seven Bells" and the cause referred to the Commissioner to ascertain and report the amount due.

II.

The petitioners respectfully represent that in holding them and the barge liable for the loss of the cargo the Court has inadvertently overlooked the following issues which are raised by the answer of the respondents and which were material to the [174] decision of this cause:

(a) Whether due diligence was used by the petitioners in providing a seaworthy barge and employing a seaworthy tug.

(b) Whether the storm encountered by the barge and tug on the voyage during which the loss occurred was an ordinary one and could reasonably have been anticipated by the petitioners.

(c) Whether such peril could have been avoided by a seaworthy vessel, or in other words, whether the proximate cause of the loss was a peril of the seas or an unseaworthy condition of the barge and tug.

(d) If the proximate cause of the loss was an unseaworthy condition of the barge and tug, and nevertheless the petitioners had exercised due diligence to make the barge seaworthy and to employ a seaworthy tug, whether petitioners would still be exempt by the bill of lading under which the cargo was shipped.

(e) Whether the petitioners are entitled to limit their liability to the value of their interest in the barge and freight subsequent to the stranding and wreck.

### III.

The petitioners respectfully represent that the Court appears to have adopted an erroneous rule to determine the seaworthiness of the tug.

These matters and others pertinent thereto, the petitioners respectfully pray may receive the consideration of the Court and for that purpose they ask that a rehearing thereof be granted and that pending the hearing on this petition all further proceedings in this cause be stayed.

Dated July 6th, 1915.

O. K. GRAU,  
IRA S. LILICK,  
HILL & SEALBY,

Proctors for Petitioners. [175]

Due service and receipt of a copy of the within Petition for Rehearing is hereby admitted this sixth day of July, 1915.

H. W. HUTTON,  
Proctor for Libelant.

[Endorsed]: Filed Jul. 6, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [176]

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At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the court-room thereof, in the city and county of San Francisco, State of California, on Saturday, the 30th day of October, in the year of our Lord One Thousand Nine Hundred and Fifteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,594.

V. CHEDA,

vs.

HALVERSON TRANSPORTATION CO. etc., et al.

**(Order Denying Petition for Rehearing.)**

This cause came on regularly this day for hearing on the Petition for rehearing of the issues joined herein. After hearing H. W. Hutton, Esq., proctor for libelant, and Mr. Hill, on behalf of the respondent, the Court ordered that said Petition be, and the same is hereby denied. [177]



*In the District Court of the United States, in and for  
the Northern District of California.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION CO. et al.,  
Respondents.

(Dismissal as to A. M. De Vall.)

The above cause is hereby dismissed as to respondent A. M. De Vall.

Dated October 21st, 1915.

H. W. HUTTON,  
Proctor for Libelant.

[Endorsed]: Filed Oct. 22, 1915. W. B. Maling,  
Clerk. By T. L. Baldwin, Deputy Clerk. [178]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation et al., etc.,  
Respondents and Claimants.

**(Final Decree.)**

Francis Krull, Esquire, United States Commissioner, to whom the above cause was referred to take proof of the value of the goods lost as mentioned in libelant's libel, having filed his report bearing date the 10th day of September, 1915, by which he found that there was owing and unpaid to the libelant for and on account of said loss of goods, the sum of Two Thousand Seven Hundred and Four and 25/100 (\$2,704.25) Dollars, and the said report having been duly filed in open court, and no exceptions having been taken to said report within the time allowed by law and the rules of this court, or at all, and libelant having on the 2d day of October, 1915, moved in open court for an order confirming said report, and at said time admitting that the sum of One Hundred and Eight (\$108) Dollars had been paid on account of said amount so reported due, thereupon said motion was granted and said report was by order of this Court duly given and made confirmed for the amount so found due as aforesaid, less the sum of One Hundred and Eight (\$108) Dollars and the same is hereby so confirmed. And it is ordered, adjudged and decreed, and this does order adjudge and decree, that for and on account of the [179] matters set forth in the pleadings and shown by the proofs herein, the libelant have and recover from Halvorsen Transportation Company, a corporation, respondent herein, and a certain barge claimed herein by said Halvorsen Transportation Company

and the gasoline launch "Seven Bells," her engines and machinery and appurtenances the sum of Two Thousand Five Hundred and Ninety-six and 25/100 (2,596.25) Dollars, together with interest at the rate of six per cent per annum on the sum of Two Thousand Four Hundred and Twenty-one and 72/100 (\$2,471.72) Dollars of said amount from the 10th day of September, 1915.

It is further ordered, adjudged and decreed, and this does order, adjudge and decree, that for and on account of said loss of goods libelant have and recover from the following named respondents herein, on their liability as stockholders in the said Halvorsen Transportation Company the said amounts hereinbefore mentioned in the following proportions respectively:

From J. B. Arkison, the sum of Three Hundred and Fifty-three and 24/100 (\$353.24) Dollars, together with interest at the rate of six per cent per annum on the sum of Three Hundred and Twenty-nine and 50/100 (\$329.51) Dollars thereof from the 10th day of September, 1915.

From H. C. Halvorsen, the sum of Seven Hundred and Thirty-five and 89/100 (\$735.89) Dollars, together with interest at the rate of six per cent per annum on the sum of Six Hundred and Eighty-six and 42/100 (\$686.42) Dollars, thereof, from the 10th day of September, 1915.

From George W. Dornin, the sum of Six Hundred and Seventy-seven and 92/100 (\$677.92) Dollars, together with interest at the rate of six per cent per annum on the sum of Six Hundred and Thirty-one

and 51/100 (\$631.51), thereof from the 10th day of September, 1915.

From C. R. Coddington, the sum of Five and 88/100 (\$5.88) [180] Dollars, together with interest at the rate of six per cent per annum on the sum of Five and 49/100 (\$5.49) Dollars thereof from the 10th day of September, 1915.

From G. C. Coddington the sum of Six Hundred and Seventy-seven and 92/100 (\$677.92) Dollars, together with interest at the rate of six per cent per annum on the sum of Six Hundred and Thirty-one and 51/100 (\$631.51) Dollars of said amount from the 10th day of September, 1915.

From P. S. Colby, the sum of One Hundred and Forty-seven and 19/100 (\$147.19) Dollars, together with interest at the rate of six per cent per annum on One Hundred and Thirty-seven and 28/100 (\$137.28) Dollars of said amount from the 10th day of September, 1915.

And with costs herein to be taxed.

It is further ordered, adjudged and decreed, that unless an appeal be taken from this decree within the time provided by law and the rules and practice of this court, the stipulators for costs on the part of the claimants and respondents, and the stipulator for value on the part of the claimant of the barge seized and claimed herein, respectively cause the engagements of their stipulations to be performed, or show cause why execution should not issue against them to enforce satisfaction of this decree to the extent of

their liability on their said stipulations.

Dated October 30, 1915.

M. T. DOOLING,  
Judge.

(Endorsed): Filed Nov. 1, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [181]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation et al., a Certain Barge, and the  
Gasoline Launch "SEVEN BELLS," Her En-  
gines and Machinery and Appurtenances,  
Respondents.

**Notice of Appeal [of Halvorsen Transportation Co.,  
a Corporation, et al., Claimants of Gasoline  
Launch "Seven Bells," etc.]**

To V. J. B. Cheda and to H. W. Hutton, His Proctor,  
and to W. B. Maling, Clerk of the District Court  
of the United States for the Northern District of  
California:

YOU AND EACH OF YOU WILL PLEASE  
TAKE NOTICE that the claimants of the gasoline  
launch "Seven Bells," one of the respondents in the  
above-entitled cause, do hereby appeal to the United  
States Circuit Court of Appeals for the Ninth Circuit

from the final decree of the District Court of the United States for the Northern District of California entered in said cause on the 30th day of October, 1915.

Dated November 20, 1915.

ANDORS & HENGSTLER,  
I. F. CHAPMAN,  
GOLDEN W. BELL,

Proctors for Said Claimants. [182]

Due service and receipt of a copy of the within Notice of Appeal is hereby admitted this 22 day of November, 1915.

H. W. HUTTON,  
Proctor for Libelant.  
IRA S. LILLICK,  
O. K. GRAU,

Proctors for Claimant and Certain Respondents.

[Endorsed]: Filed Nov. 22, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [183]



*In the District Court of the United States, for the  
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant and Appellee,

vs.

The Gasoline Launch "SEVEN BELLS," Her En-  
gines, Machinery and Appurtenances et al.,  
Respondent.

A. H. GILMORE and STANDARD GAS ENGINE  
COMPANY,

Claimants of Said Launch, and Appellants.

**Assignment of Errors [of Halvorsen Transportation  
Co. et al.].**

Come now the claimants of the launch "Seven Bells," her engines, machinery, and appurtenances, appellants herein, and assign as error in the conclusions, findings proceedings and decree of the District Court, the following:

1. The District Court erred in ordering and in entering a decree in favor of libelant against the launch "Seven Bells," her engines, machinery and appurtenances.

2. The District Court erred in not dismissing libelant's amended libel against the launch "Seven Bells," her engines, machinery and appurtenances, with costs to the claimants thereof.

3. The District Court erred in concluding that the

launch "Seven Bells" was not sufficient for the business in which she was engaged for weather ordinarily to be expected in winter on San Francisco Bay and its tributaries. [184]

4. The District Court erred in concluding that the launch "Seven Bells" was not sufficient to handle the unnamed barge described in the amended libel in weather ordinarily to be expected in winter on San Francisco Bay and its tributaries.

5. The District Court erred in concluding that the launch "Seven Bells" was not sufficient to handle the barge on the flats near the mouth of San Rafael Creek in rough weather.

6. The District Court erred in not concluding, finding and holding that the launch "Seven Bells" was in all respects sufficient and seaworthy for the business in which she was engaged at the times and under the circumstances involved in the case at bar.

7. The District Court erred in not concluding, finding and holding that there was no negligence or want of care in the navigation of the launch "Seven Bells" at any of the times involved in the case at bar; and in not concluding, finding and holding that due and proper care was at all of said times exercised in the navigation of said launch, and in the towing by her of said barge.

8. The District Court erred in not concluding, finding and holding that the launch "Seven Bells" was justified in leaving the city of San Francisco upon the morning in question in the case at bar, and that those in charge of her navigation exercised due care and acted as cautious, reasonable and prudent

navigators in leaving said city at said time, with said barge.

9. The District Court erred in failing to take into consideration in deciding the case at bar, the peculiar nature of the continuous voyage which the launch "Seven Bells" with her tow was required to make, involving as it did, first, the navigation of the deep waters of San Francisco Bay, and then the navigation of the shallow waters of San Rafael Creek.

10. The District Court erred in exercising hypercritical scrutiny of the catastrophe involved in the case at bar, after its occurrence, [185] as the test of fault or insufficiency on the part of the launch "Seven Bells," instead of accepting and relying upon the judgment of prudent and experienced navigators presently confronted with the situation involved.

11. The District Court erred in concluding that the weather during the times involved in the case at bar was such as was to be ordinarily expected on San Francisco Bay at that season of the year; and in not concluding, finding and holding that a storm arose, with a suddenness and of a violence extraordinary, unusual and unforeseeable, which caused all loss in question in the case at bar; and in not concluding, finding and holding that said storm was an act of God and a peril of the sea.

12. The District Court erred in failing to conclude, find and hold that the launch "Seven Bells" was not under a common carrier's liability with relation to libellant's cargo, and that the burden of proof was upon libellant, with reference to said launch, to

affirmatively prove and establish negligence upon her part.

Dated San Francisco, California, February 23, 1916.

ANDROS & HENGSTLER,  
I. F. CHAPMAN,  
GOLDEN W. BELL,

Proctors for Claimants of Launch "Seven Bells,"  
and Appellant.

Receipt of a copy of the within Assignment of Errors is hereby admitted this 23d day of February, 1916.

IRA S. LILLICK,  
Proctor for Respondents.  
H. W. HUTTON,  
Proctor for Libelant.

[Endorsed]: Filed Feb. 23, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [186]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation, J. B. ARKISON, H. C. HAL-  
VORSEN, GEORGE W. DORNIN, A. M.

DE VALL, a Certain Barge and Gasoline Launch, "SEVEN BELL," Her Engines, Machinery and Appurtenances,

Respondents.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation,

Claimant.

**Notice of Appeal (Halvorsen Transportation Co.  
et al.).**

To V. J. B. Cheda and to H. W. Hutton, his Attorney, and to W. B. Maling, Clerk of the District Court of the United States, for the Northern District of California.

You, and each of you, will please take notice that Halvorsen Transportation Company, a corporation, J. B. Arkison, H. C. Halvorsen, George W. Dornin, P. S. Colby, C. R. Coddling and G. C. Coddling, respondents in the above-entitled cause, and Halvorsen Transportation Company, a corporation, claimant of said barge, hereby appeal to the United States Circuit of Appeals, for the Ninth Circuit, from the final decree of the District Court of the United States, for the Northern District of California, entered in said cause upon the 30th day of October, 1915.

Dated November 17th, 1915.

O. K. GRAU,

IRA S. LILLICK,

Proctors for Halvorsen Transportation Co., a Corporation, J. B. Arkison, H. C. Halvorsen, Geo. W. Dornin, Halvorsen Transportation Co., as Claimant of Said Barge, P. S. Colby, C. R. Coddling and G. C. Coddling. [187]

Due service and receipt of a copy of the within Notice of Appeal is hereby admitted this 20 day of November, 1915.

H. W. HUTTON,

Proctor for Libelant.

ANDROS & HENGSTLER,

I. F. CHAPMAN,

GOLDEN W. BELL,

Proctors for "Seven Bells."

[Endorsed]: Filed, Nov. 22, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [188]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant and Appellee,

vs.

HALVORSEN TRANSPORTATION CO., a Corporation, J. B. ARKISON, H. C. HALVORSEN, GEORGE W. DORNIN, C. R. CODDING, G. C. CODDING, P. S. COLBY, A. M. DE VALL, and a Certain Barge,

Respondents and Appellants.

HALVORSEN TRANSPORTATION CO., a Corporation,

Claimant of Said Barge and Appellant.



**Assignment of Error (Halvorsen Transportation Co. et al).**

Comes now the Halvorsen Transportation Co., J. B. Arkison, H. C. Halvorsen, George W. Dornin, C. R. Coddington, G. C. Coddington, P. S. Colby and A. M. De Vall, appellants herein, and assign as errors in the conclusions, findings, proceedings and decree of the District Court the following:

I.

The District Court erred in ordering and in entering a decree in favor of libellant against appellants above named.

II.

The District Court erred in not dismissing libellant's amended libel against said appellants, with costs to said appellants.

III.

The District Court erred in concluding that the launch, "Seven Bells," and the unnamed barge described in the amended libel were not sufficient for the business in which they were engaged for weather ordinarily to be expected in winter on San Francisco Bay and its tributaries. [189]

IV.

The District Court erred in concluding that the launch "Seven Bells," was not sufficient to handle said barge in weather ordinarily to be expected in winter on San Francisco Bay and its tributaries.

V.

The District Court erred in concluding that the launch, "Seven Bells," was not sufficient to handle

the barge on the flats near the mouth of the San Rafael Creek in rough weather.

#### VI.

The District Court erred in concluding that the weather during the times involved in the case at bar was such as was to be ordinarily expected on San Francisco Bay at that season of the year, and in not concluding, finding and holding that a storm arose with a suddenness and of a violence extraordinary, unusual and not foreseeable, which caused all loss in question in the case at bar, and that said storm was an act of God and a peril of the sea.

#### VII.

The District Court erred in not concluding, finding and holding that said appellants and owners of said unnamed barge had exercised due diligence to provide a seaworthy barge and to employ a seaworthy launch.

#### VIII.

The District Court erred in concluding, finding and holding that the peril encountered by said launch and barge on the voyage in question could have been weathered by a seaworthy vessel, and that said peril was the proximate cause of the loss, and not the unseaworthy condition of the launch and barge, if the same were unseaworthy.

#### IX.

The District Court erred in not concluding, finding and [190] holding that, if the proximate cause of the loss was an unseaworthy condition of the launch and barge, but nevertheless the owner of the barge had exercised due diligence to make the barges seaworthy and to employ a seaworthy launch,

said appellants were exempt from liability by the bill of lading under which said cargo was shipped.

X.

The District Court erred in not concluding, finding and holding that said appellants and the owners of said barge were exempt from liability under the Act of Congress, approved Feb. 13, 1893, entitled "An Act Relating to the Navigation of Vessels, Bills of Lading and Certain Obligations, Duties and Rights in Connection with the Carriage of Property," the so-called Harter Act.

XI.

The District Court erred in not concluding, finding and holding that the liability, if any, of said appellants and the owners of said barge is limited to the amount, or value, of their interest in the barge and freight just after the stranding and wrecking, under the Act of Congress of March 3, 1851; the so-called Limited Liability Act.

Dated San Francisco, Cal., March 1, 1916.

IRA S. LILLICK and

O. K. GRAU,

Proctors for Halvorsen Transportation Co., J. B. Arkison, H. C. Halvorsen, George W. Dornin, C. R. Coddington, G. C. Coddington, P. S. Colby and A. M. DeVall, and Claimants of an Unnamed Barge and Appellants.

Due service and receipt of a copy of the within

Assignment of Error is hereby admitted this 1st day of March, 1916.

H. W. HUTTON,  
Proctor for Libelant and Appellee.

I. F. CHAPMAN,  
ANDROS & HENGSTLER,  
GOLDEN W. BELL,

Proctors for "Seven Bells," etc.

[Endorsed]: Filed, Mar. 1, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [191]

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*In the District Court of the United States, for the  
Northern District of California.*

No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION COMPANY,  
a Corporation, J. B. ARKISON, H. C. HAL-  
VORSEN, GEORGE W. DORNIN, A. M.  
DE VALL, a Certain Barge and Gasoline  
Launch "SEVEN BELLS," Her Engines,  
Machinery and Appurtenances,

Respondents.

**Stipulation Respecting Apostles on Appeal.**

IT IS HEREBY STIPULATED AND AGREED  
by and between all of the parties hereto that the  
same Apostles on Appeal may be used on the appeals  
of all of the respondents herein.

Dated December 21, 1915.

H. W. HUTTON,

Proctor for Libelant.

IRA S. LILLICK,

O. K. GRAU,

Proctors for Halvorsen Transportation Co.

ANDROS & HENGSTLER,

GOLDEN W. BELL,

Proctors for "Seven Bells."

[Endorsed]: Filed, Dec. 21, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [192]

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*In the District Court of the United States, in and for  
the Northern District of California, First Divi-  
sion.*

IN ADMIRALTY—No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION CO., a Corpo-  
ration et al.,

Respondents.

HALVORSEN TRANSPORTATION CO., a Corpo-  
ration,

Claimant.

**Stipulation and Order [Directing Transmission of  
Original Exhibits to Appellate Court].**

IT IS HEREBY STIPULATED AND AGREED,  
by and between the parties hereto, that all of the ex-  
hibits introduced in the depositions taken before the

commissioner in the above-entitled cause, and all exhibits introduced at the hearing before the above-entitled court, may be sent up to the United States Circuit Court of Appeals for the Ninth Circuit, as original exhibits for the Apostles on Appeal.

Dated February 25th, 1916.

H. W. HUTTON,

Proctor for Libelant.

ANDROS & HENGSTLER,

GOLDEN W. BELL,

Proctors for Claimant of Launch "Seven Bells."

IRA S. LILLICK,

O. K. GRAU,

Proctors for Halvorsen Transportation Company  
et al.

It is so ordered by the Court.

Dated February 25, 1916.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Feb. 25, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [193]

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*In the District Court of the United States, for the  
Northern District of California.*

No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

Gas Launch "SEVEN BELLS," Her Tackle, Ap-  
parel, Furniture, Engines, Machinery and  
Appurtenances,

Respondents.



**Order Extending Time to [January 20, 1916, to]  
Prepare Apostles on Appeal.**

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the appellants herein may have to and including the 20th day of January, 1916, within which time to procure to be filed the apostles on appeal certified by the Clerk of the District Court, and that the clerk of the District Court have to and including said day within which time to prepare and certify such apostles.

Dated December 20, 1915.

M. T. DOOLING,  
Judge of Said Court.

[Endorsed]: Filed Dec. 20, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [194]

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*In the District Court of the United States, for the  
Northern District of California.*

No. 15,594.

V. J. B. CHEDA,

Libellant,

vs.

Gas Launch "SEVEN BELLS," Her Tackle, Apparel, Furniture, Engines, Machinery and Appurtenances,

Respondent.

**Order Extending Time to [February 21, 1916] to  
Prepare Apostles on Appeal.**

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the appellants herein

may have to and including the 21st day of February, 1916, within which time to procure to be filed the apostles on appeal certified by the clerk of the District Court, and that the Clerk of the District Court have to and including said day within which time to prepare and certify such apostles.

Dated January 18, 1916.

M. T. DOOLING,  
Judge of Said Court.

[Endorsed]: Filed, Jan. 18, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [195]

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*In the District Court of the United States, for the  
Northern District of California.*

No. 15,594.

V. J. B. CHEDA,

Libellant,

vs.

Gas Launch "SEVEN BELLS," Her Tackle, Apparel, Furniture, Engines, Machinery and Appurtenances,

Respondent.

**Order Extending Time to [March 2, 1916] to  
Prepare Apostles on Appeal.**

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the appellants herein may have to and including the 2d day of March, A. D. 1916, within which time to procure to be filed the apostles on appeal certified by the clerk of the District Court, and that the Clerk of the District

Court have to and including said day within which time to prepare and certify such apostles.

Dated San Francisco, California, February 21, 1916.

M. T. DOOLING,  
Judge of Said Court.

[Endorsed]: Filed Feb. 21, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [196]

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*In the District Court of the United States, for the  
Northern District of California.*

No. 15,594.

V. J. B. CHEDA,

Libelant,

vs.

HALVORSEN TRANSPORTATION COMPANY  
et al.

**Order Extending Time to [March 11, 1916] to  
Prepare Apostles on Appeal.**

GOOD CAUSE APPEARING THEREFOR: IT  
IS HEREBY ORDERED that the appellants herein  
may have to and including the 11th day of March,  
A. D. 1916, within which to procure to be filed  
the apostles on appeal certified by the clerk of the  
District Court, and that the Clerk of the District  
Court have to and including said day within which  
time to prepare and certify such apostles.

Dated San Francisco, California, March 2d, 1916.

M. T. DOOLING,  
Judge of Said Court.

[Endorsed]: Filed, Mar. 2, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [197]

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**Certificate of Clerk, U. S. District Court, to Apostles  
on Appeal.**

I, Walter B. Maling, clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify that the foregoing 197 pages, numbered from 1 to 197, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the case of V. J. B. Cheda vs. Halvorsen Transportation Company, a Corp., et al., number 15,594, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in accordance with "Amended Praecipe for Apostles on Appeal" (copy of which is embodied in this transcript), and the instructions of Golden W. Bell, Esq., one of the attorneys for appellants herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of ne Hundred Eight Dollars and Twenty Cents (\$108.20), and that the same has been paid to me by the attorneys for appellants herein.

(Four exhibits are transmitted herewith in their original form, pursuant to an order of this Court; a copy of which is included in this transcript.)

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said District Court,  
this 10 day of March, A. D. 1916.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled  
3/10/16. C. W. C.]

CMT. [198]

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[Endorsed]: No. 2760, United States Circuit  
Court of Appeals for the Ninth Circuit. Halvorsen  
Transportation Company, a Corporation, J. B. Arki-  
son, H. C. Halvorsen, George W. Dornin, C. R. Cod-  
ding, G. C. Coddington, P. S. Colby, and A. M. De Vall,  
and a Certain Barge and the Gasoline Launch  
"Seven Bells," Her Engines and Machinery and Ap-  
purtenances, Appellant, vs. V. J. B. Cheda, Appellee.  
Apostles on Appeal. Upon Appeal from the United  
States District Court for the Northern District of  
California, First Division.

Filed March 11, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

